TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1910~~ 1911

No. ~~997~~ 251

GEORGE W. RADFORD, PLAINTIFF IN ERROR,

vs.

MARY D. MYERS, EXECUTRIX OF THE ESTATE OF ELIJAH E. MYERS, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED APRIL 29, 1912.

(23,192)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 23, 1912.

a STATE OF MICHIGAN:

Supreme Court.

MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Plaintiff and Appellee,
vs.
GEORGE W. RADFORD, Defendant and Appellant.

GEORGE W. RADFORD, Cross-Complainant and Appellant,
vs.
MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Cross-Defendant and Appellee.

Ostrander, Bird, Steere, Moore, McAlvay, Brooke, Blair, Stone.

Record.

Mr. Thomas A. E. Weadock, Solicitor for Appellant.
Mr. C. K. Latham and Mr. Wm. C. Stuart, Solicitors for Appellee.

[Stamped:] Received Sep. 26, 1910. Chas. C. Hopkins, Clerk Supreme Court.

1 STATE OF MICHIGAN:

Supreme Court.

MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Plaintiff and Appellee,
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vs.
MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Cross-Defendant and Appellee.

RECORD.

2 *Bill of Complaint.*

Filed Oct. 25, 1907.

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

To the Circuit Court for the County of Wayne, in Chancery:

Your orator, Elijah E. Myers, of the city of Detroit, in said county, complainant herein, brings this his bill of complaint against George

W. Radford, defendant herein, and complaining shows unto the Court as follows:

1. That on or about the 22nd day of February, A. D. 1895, your orator entered into a contract with the County of Luzerne, in the State of Pennsylvania to furnish plans and specifications for and superintend the construction of a court house to be built in the city of Wilkes-Barre, in said County of Luzerne.

2. That subsequent thereto and on or about the 2nd day of January, 1898 your orator assigned one half of said claim he had against said County of Luzerne by reason of said contract, to his son George W. Myers.

3. That afterwards and on, to wit, the 9th day of December, A. D. 1899, your orator assigned to said George W. Radford the other one half of said claim against said County of Luzerne to secure said defendant for the sum of, to wit, $4,000.00 owing to him by your orator, which was for money loaned to and for services performed for your orator up to said date, and also as security for costs and expenses in any litigation against said County of Luzerne to collect the amount owing to your orator on said claim against said County of Luzerne.

3 4. That at the time of said assignment to said defendant there was owing to your orator by said County of Luzerne under said contract the sum of, to wit, $15,000.00.

5. That afterwards and on, to wit, the 11th day of April, A. D. 1900 the said defendant, acting for and on behalf of your orator, purchased from your orator's said son, George W. Myers, the one half of said claim against said County of Luzerne which your orator had assigned to said George W. Myers and paid said George W. Myers therefor the sum of $150.00.

6. Your orator further alleges that at the time of said purchase from said George W. Myers it was distinctly understood and agreed by and between your orator and said defendant that said defendant should hold said assignments from your orator and said George W. Myers as security for all moneys owing by your orator to said defendant for loans made to and services performed for your orator by said defendant, including the sum of $150.00 paid by said defendant to said George W. Myers as aforesaid and also as security for all costs and expenses of litigation in connection with the recovery of said claim against said County of Luzerne, and that upon the recovery of said sum said defendant should deduct all such sums and turn over to your orator whatever sum should remain after such payment.

7. Your orator further shows that afterwards suit was commenced in the Circuit Court of the United States for the Middle district of Pennsylvania in the name of your orator against said County of Luzerne to recover the amount of said claim, and afterwards, to wit, on the 25th day of February, A. D. 1903, a verdict was rendered in favor of your orator and against said County of Luzerne for over $14,000.00, and judgment was duly entered thereon.

8. That afterwards, and on, to wit, the 1st day of March, A. D. 1903, said County of Luzerne paid into said Court to satisfy said

judgment the sum of ($14,837.98) Fourteen thousand eight
4 hundred thirty-seven and 98/100 Dollars, which said sum
was afterwards and on, to wit, the 12th day of March, A. D.
1903 paid over to the said defendant.

9. That since the turning over of said sum of money to said defendant, said defendant has paid to your orator small sums of money from time to time for which amounts said defendant holds notes or written memoranda of your orator.

10. That your orator has repeatedly made demand upon the said defendant to come to an accounting with your orator and turn over to your orator the balance of the said sum so received by said defendant on said judgment and the said defendant has repeatedly promised your orator to make such an accounting and pay to your orator the balance owing him, but the said defendant has wholly failed and neglected so to do.

11. That your orator does not know what amounts were paid out by said defendant in connection with said litigation against said County of Luzerne, nor does your orator know the exact value of the legal services performed by said defendant for and on behalf of your orator but your orator alleges and states the fact to be that after deducting from the amount so received by said defendant on said judgment all claims of every kind and nature which the said defendant may lawfully have against your orator there remains due and owing to your orator from said defendant a large sum of money, to wit, the sum of Six thousand dollars.

12. That the said defendant has repeatedly admitted to others that there was a large sum of money due and owing to your orator from him on the amount received by him on said judgment as aforesaid.

13. That your orator for a long period of time rented an office in the Home Bank Building in said city of Detroit, and from time to time gave said defendant as your orator's attorney
5 large sums of money aggregating, to wit, the sum of $750.00 with which to pay the owners of said building the rent of said office, but on information and belief, your orator alleges and states the fact to be that the said defendant failed to pay said sums of money or any part thereof to the owners of said building and has wholly failed, refused and neglected to account for the same to your orator.

14. That said accounts cannot properly be taken except in a court of equity.

Your orator therefore prays:

1. That the said defendant may be required to answer this, your orator's Bill of Complaint.

2. That the said defendant may make a full and true discovery and disclosure of and concerning all and singular the transactions and matters aforesaid, and that an account may be taken by and under the direction and decree of this honorable Court of all dealings and transactions between your orator and the said defendant.

3. That the balance which shall be found due upon taking such account may be paid by the said defendant to your orator, and that

the said defendant may be ordered and decreed to pay to your orator the sums so found to be due, and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to this honorable Court shall seem meet.

And your orator will ever pray etc.

(Signed) E. E. MYERS.

C. K. LATHAN,
WM. C. STAURT.
Solicitors for Complainant.

6 *Defendant's Answer and Cross-Bill.*

Filed and Served Dec. 14, 1909.

(Entitled in Court and Cause.)

This defendant, reserving unto himself all right of exception to the said Bill of Complaint, for answer thereunto, says:

1. That he admits the allegations of the first paragraph of said bill to be substantially true.

2. That he admits the allegations of the second paragraph of the said bill, except that the date of said assignment by the complainant to George W. Myers was January 2nd, 1896 instead of January 2nd, 1898, as stated in said paragraph.

3. That, in answer to paragraph three of said bill, he admits that on to-wit: December 9th, 1899, the said complainant assigned and transferred to this defendant his, complainant's remaining one half interest in said contract and claim against said County of Luzerne; but defendant denies that all the purposes of said assignment are fully and correctly set forth in said paragraph of said bill. That he admits that said complainant was indebted to him, but avers that said indebtedness was for a much larger amount than four thousand dollars. And the defendant avers that said assignment by said complainant to him was given to secure to him the payment of then existing indebtedness of complainant to the defendant as well as all future loans and for all future services to be rendered to complainant in other matters as well as for services, costs, expenses and disbursements of every kind in connection with any
7 litigation commenced or to be commenced against said county of Luzerne for the collection of said claim.

4. That he denies the allegations of the fourth paragraph of said bill and avers the facts to be that, at the time of the said assignment by said complainant to this defendant, there was due under said contract of complainant with said County of Luzerne the principal sum of ten thousand dollars ($10,000.00), of which complainant owned and was only entitled to one-half, having previously assigned the other half thereof to George W. Myers, as alleged in paragraph two of said bill, the correct date of such assignment being January 2nd, 1896.

And the defendant further avers that, at the time of said assignment to defendant, the whole of said claim was being contested in a suit in the Circuit Court of Luzerne County, Pennsylvania, in complainant's name as plaintiff, which had been pending since July 1895, without anything having been done in said case, except an application for a change of venue, which had been filed about two years previously on behalf of complainant, on the ground of local prejudice, and which was still undetermined; that said claim was of doubtful character, and uncertain of recovery in said state court, with every indication of a bitter contest on the part of said defendant county, had the same been pressed; that said complainant was financially irresponsible and without funds to prosecute said case, and that about the only hope defendant had of realizing upon his claim against said complainant was by securing the same from and out of the proceeds of the one-half interest in said claim assigned as aforesaid to the defendant; that it was then understood between the said complainant and this defendant that practically nothing would be coming to the said complainant out of the proceeds of the said claim, if anything was ever realized thereon, over and above the amount of the said complainant's indebtedness to this de-
8 fendant, and that, therefore, said assignment was made absolute in its terms.

5 That he denies the allegations of the fifth paragraph of said bill as therein stated, and especially denies that he acted for and on behalf of the complainant in making the purchase of one-half of said claim from George W. Myers; and the defendant shows and avers the facts regarding said purchase to be as follows,—that, on to-wit, April 2nd, 1900, said George W. Myers and this defendant entered into a written agreement for the prosecution of said suit, and the collection of the moneys due on said contract, providing for the payment of the expenses thereof, and, after first deducting an attorney's fee therein and thereby agreed to be paid to this defendant, and also one-half of all court costs and disbursements and other legal services incurred and to be incurred in said suit or other suits, to account to said George W. Myers for all of his one-half in excess thereof; that the said complainant was present and consented to the said agreement, and the defendant avers that the said consent was intended to and did operate as a reaffirmation of the said complainant's prior assignment of January 2nd, 1896 of said one-half interest to George W. Myers. And the defendant further avers that, thereafter, on, to-wit, April 11th, 1900, the said George W. Myers, for a good and valuable consideration to him paid by this defendant, absolutely sold and assigned all his right, title and interest in and to the above mentioned agreement of April 2nd, 1900, between himself and defendant, and in his one-half interest in and to said contract, and that thereby this defendant became the absolute owner thereof. But this defendant says that, notwithstanding that he so became the absolute owner of said half interest, he purchased the same with the distinct intention on his part that, in case of success in collecting the claim, whatever remained after payment of expenses, services and all of complainant's indebtedness to defend-

ant, should be applied for the benefit of complainant. It was
9 not, however, the intention of this defendant, thereby to waive any of his rights as such absolute owner, nor did he intend to allow said complainant to in any way dictate what such expenses should be or in any way fix or determine the value of this defendant's services, and complainant's indebtedness to him, or guess at the same in any such manner as set forth in his said bill.

6. That he denies the allegations of paragraph six as therein stated. And he shows and avers that the one-half interest belonging to the complainant was assigned by said complainant as set forth in paragraph three of this answer; but avers that the said one-half interest in said contract belonging to said George W. Myers was by him absolutely and unconditionally sold and assigned to this defendant on April 11th, 1900, as set forth in paragraph five of this answer.

7. That he admits the allegations of paragraph seven of said bill to be substantially correct. And the defendant shows and avers that under and by virtue of said assignments he had the right to commence and prosecute said suit in the complainant's name, which was done with the complainant's knowledge and consent. That said former suit in the state court was abandoned by this defendant after two trips to Wilkes-Barre, an exhaustive investigation of the facts and study of the law, and a new suit instituted in the United States Court, because of the difference of the rule as to defenses allowed in the United States Court, which new suit this defendant prosecuted to effect at great expense and professional labor.

And the defendant further avers that, after verdict was obtained and judgment rendered in said cause, the said judgment was transferred and assigned by the said complainant to this defendant, on, to-wit, March 3rd, 1903, in full recognition of this defendant's ownership thereof under the assignments hereinbefore set forth.

10 8. That he denies the allegations of paragraph eight of said bill as therein stated. And the defendant alleges and shows the facts to be, that one-half of the amount of said judgment was, by the said County of Luzerne, paid over to Messrs. Willard, Warren and Knapp, who were the local attorneys acting for and on behalf of this defendant at Scranton, Pennsylvania; that said Willard, Warren and Knapp accounted therefor to this defendant, and that said complainant was present, knew of this at the time and made no claim to any part thereof; that the remaining half of said amount of said judgment was, by leave of court, paid into said court by said county in satisfaction of said judgment, because of a false claim thereto set up by said George W. Myers, who attempted to repudiate his aforesaid agreement and sale to this defendant. That this defendant thereafter, with full knowledge thereof by complainant herein, filed his petition in said Court and cause, asserting his title thereto, and asking leave to withdraw said fund from Court; that said George W. Myers appeared and contested the defendant's title and application; upon the issue thus framed, a large amount of testimony was taken and many witnesses were sworn in behalf of this defendant, including the complainant herein, and after full

and complete hearing it was adjudged and decreed by the Court in said cause, by opinion rendered on July 23rd, 1903, that this defendant was the absolute owner of said one-half of said claim and of the entire fund so paid into Court, which was paid over to this defendant, less costs, and charges of said Willard, Warren and Knapp, some time thereafter, with full knowledge thereof by the complainant, without his making any claim to any part thereof; and this defendant avers that, by said decision the title of this defendant to said fund became and is res judicata as to the complainant in this cause as well as to George W. Myers.

This defendant further shows that the expenses of said litigation with George W. Myers, and of another suit of said George
11 W. Myers on the Chancery side of this Court against the complainant and this defendant for the same purpose, including compensation for services of this defendant in both of said proceedings was upwards of twenty-five hundred dollars. And the defendant further shows that, when this defendant proposed to prosecute said George W. Myers for malicious bringing of said suits, said complainant requested that it be not done, although he knew and so stated that said expense exhausted said proceeds to such an extent as to leave little or nothing for his benefit as set forth in the fifth paragraph of this answer.

9. That he denies the allegations of paragraph nine as therein stated, and avers that no money has been paid to the complainant by him as and for a payment of anything owed by him to the complainant, but that, from and after said assignment by complainant to this defendant of December 9th, 1899, this defendant continued to lend money to the complainant at various and sundry times and in divers amounts, for which, in nearly all cases this defendant holds the complainant's notes and written evidences of indebtedness; and also that, from time to time, since said December 9th, 1899, this defendant has rendered for the complainant extensive services in various other matters, and avers that said complainant was indebted to this defendant in a large sum of money at the time of filing his said bill.

10. That he denies each and every allegation of the tenth paragraph of said bill, and avers that, instead of complainant making any demand for accounting and payment by this defendant, that this defendant repeatedly demanded that complainant come and go over his indebtedness and agree upon the amount due this defendant, that the complainant promised so to do, but never did so, and each time toward the last, when asking for a new loan, stated that he expected money soon and would then pay back something, which
12 promises he never kept, until finally defendant was obliged and did refuse to make any more loans to the complainant.

11. That he denies the allegations of the eleventh paragraph of said bill as to complainant's lack of knowledge of the expenses of said litigation, and the value of the defendant's services and amounts loaned to the complainant, and avers that the complairant knew and had all means of knowledge of said amounts at all times, as the entire subject was frequently discussed between them; and defendant expressly denies that there is due and owing from him to the com-

plainant the sum stated in said paragraph or any other sum whatever and again alleges and avers that said complainant is largely indebted to him as set forth in the ninth paragraph of this answer.

And defendant further avers that the indebtedness of the complainant to him set forth in this answer, including the costs and expenses of said litigation with said County of Luzerne and with George W. Myers, largely exceeds the entire amount realized by the defendant from the entire of said claim.

12. That he denies the allegations of paragraph twelve of said bill and says that the same are untrue.

13. In answer to paragraph thirteen of said bill he admits that the complainant, at one time, rented an office in the Home Bank Building, in the city of Detroit, but he expressly denies each and every of the other allegations of the said paragraph thirteen and says that the same are wholly false and untrue. And he further says that no such claim or pretense has ever been made to him before.

14. That, in answer to paragraph fourteen of said bill, he denies that any accounting is necessary to be had by him on the theory and averments of the complainant's bill.

15. That he makes all the papers and documents referred to in this answer, the judgment and opinion of the Circuit Court of the United States for the Middle District of Pennsylvania adjudicating
13 the matters and rights involved in this cause as to George W. Myers' said half interest, a part of this answer as fully as though set forth at length herein.

16. That he denies that the complainant is entitled to the relief or to any part thereof, as claimed in said bill, and he prays to be hence dismissed with his lawful costs and charges in this behalf most wrongfully and unjustly sustained.

And now, having fully answered said bill, and relying upon the rule of law and equity, that the Court, having taken jurisdiction of this case for one purpose, it will dispose of all questions between the parties in order to avoid a multiplicity of suits, this defendant claims the benefit of a cross-bill, and makes the allegations of fact contained in his answer the basis of his prayer for affirmative relief, in that this Court shall determine the amount of the indebtedness of the complainant to this defendant, and prays that the complainant may be ordered and required by the decree of this honorable Court to pay to defendant the amount so found to be due from the complainant to the defendant.

And that he may have such other, further and different relief as he may be entitled to, and as to the Court may seem just and proper.

(Signed) GEORGE W. RADFORD,
Defendant and Cross-Complainant.

(Signed) S. P. BRADLEY,
Solicitor for Defendant and Cross-Complainant.

Business Address, 32-33 Home Bank Building, Detroit, Michigan.

14 *Case on Appeal.*

Signed, settled and filed Aug. 5, 1910.

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne, in Chancery.

No. 32120.

ELIJAH E. MYERS, Complainant and Cross-Defendant,

vs.

GEORGE W. RADFORD, Defendant and Cross-Complainant.

This cause, having been heard before the Honorable Alfred J. Murphy, one of the judges of the Circuit Court for the County of Wayne, sitting in chancery, upon pleadings and proofs taken in open court, and a decree having been entered therein, in favor of the complainant and against the defendant, the said circuit judge being absent from the state, Hon. Joseph W. Donovan, Circuit Judge, upon the prayer of the said defendant and cross-complainant, George W. Radford and acting by consent of the parties, has settled the following transcript or case, on appeal, setting forth the evidence taken upon the hearing of said cause, which hearing extended from January 26, 1909, to February 16, 1909, with intermissions, and consuming thirteen (13) court days, as follows, to-wit:

Appearances:

Charles K. Latham and William C. Stuart, for complainant.
Thomas A. E. Weadock and S. P. Bradley, for defendant.

15-16 ELIJAH E. MYERS, complainant, sworn in his own behalf:

Direct examination by Mr. STUART:

* * * * * * *

Mr. STUART: We now offer in evidence an assignment from
17 E. E. Myers to Geo. W. Radford, dated the 9th day of September, 1899; it is attached in the case of Elijah E. Myers vs. the County of Luzerne, United States Circuit Court for the Middle District of Pennsylvania.

The paper referred to is marked "Exhibit 1.—T. D."

Mr. STUART: We now offer in evidence the agreement dated January 2, 1896, between Elijah E. Myers and Geo. W. Myers, respecting the interest of Elijah E. Myers in the said contract, also attached in the same case.

The paper referred to is marked "Exhibit 2.—T. D."

Mr. STUART: We will now offer in evidence the assignment from Geo. W. Myers to Geo. W. Radford, attached in the same case.

The paper referred to is marked "Exhibit 3—T. D."

18 Mr. STUART: Is this the second assignment you have reference to; written on the bottom of Exhibit 3?

Mr. WEADOCK: Yes; this is the one that was in question in Judge Archbald's opinion.

The paper last referred to is marked Exhibit 4.

* * * * * * *

19 Cross-examination by Mr. WEADOCK:

* * * * * * *

20–22 Mr. Radford and I were very good friends for a long time; all the time this litigation was going on down in Pennsylvania; also while that part of the litigation which was here was going on. I knew about the suit which Mr. May commenced in the Wayne Circuit Court, and Mr. Radford attended to that for me. I knew about the effort Mr. May made to get this money for my son down in Pennsylvania. I knew all about that, and was examined as a witness about that here in the United States court. That examination was before Mr. Harsha and lasted 4 or 5 days.

* * * * * * *

23 Q. I show you Geo. W. Radford's check, dated April 11, 1900, Exhibit 7, and ask you if you ever saw that check, to the order of Geo. W. Myers, April 11.

A. I don't remember ever seeing that check.

Q. You see it is to the order of Geo. W. Myers?

A. Yes, sir.

Q. And you see it is dated April 11?

A. I don't know anything about that.

Q. And you see the amount, $150.

A. Yes, sir.

Mr. STUART: Objected to, the check shows for itself.

Q. Does that refresh your recollection?

A. It helps to show——

Q. Just answer the question; I don't want anything else.

Mr. STUART: I object to it. The witness says he does not know anything about the check, and he has nothing to do with it.

COURT: It may be answered.

Q. Answer that yes or no.

A. I don't know anything about the check.

Q. I show you your testimony in the United States Court in Detroit, page 191. Is that your signature (showing paper)?

A. I think it is.

Q. (Showing check) I show you the name of Geo. W. Myers, on this check of April 11, 1900. Is that your son's writing; is that his signature.

A. I cannot swear that is his signature or his handwriting.

Q. Do you mean you don't know your son's handwriting?

A. I know my son's handwriting, but that does not look
24 exactly like it to me.

Q. Will you say whether that is or is not your son's signature?

A. That is not the way I have seen him write his signature.

Q. I call your attention to page 124 of your testimony in the United States Court. Were you asked this question:

"Q. Where were you?

A. In Mississippi.

Q. When?

A. In 1900.

Q. What time in 1900?

A. About some time, I think, in April, or the beginning of May.

Q. Do you know, of your own knowledge, who did it?

A. Only from what I was told."

That is another matter. Did you so testify in the United States Court?

A. I testified in the United States Court. I know I was down there in Mississippi.

Q. Did you hear what I just read to you?

A. I think I did.

Q. And you so testified.

A. I think so; read it again to me, and I will answer.

Q. Very well.

A. I want to be positive of it.

Q. "When did you take action with reference to bringing that suit?

A. I had talked with you about the suit; I was not satisfied with the way it was going on with Mr. Lenahan, and I was not satisfied with the condition matters were in, and I was unable to push the suit myself; I had no means to do it; and I talked with you about it.

Q. Before talking with me about it—Mr. Radford examined you—did you talk with your son?

A. I had a talk with him about it.

Q. When?

A. It was several days prior to the time he had made that typewritten contract with you.

Q. Did you make an assignment of the half interest in the Wilkes-Barre contract with your son?

A. I did.

Q. Do you remember the date?

A. I think it was about a year after I took that contract.

Q. How came you to make it?

A. I was continually annoyed by him about it. I say I was continually annoyed by him, and I done it for the purpose of getting rid of him.

Q. What other reason?

A. That I signed this to him?

Q. Yes.

A. The reason was, he was to assist in the prosecution of the case.

Q. Any other consideration than those you have named?

A. I wanted peace of mind, to be let alone; he was con-
25 tinually annoying me to get it.

Q. Was there any financial consideration for your making this assignment?

A. None whatever, sir.

Q. What efforts did his mother make in that behalf?

A. As I understand it, he went to his mother and claimed he got the Wilkes-Barre contract, and that he ought to have it, and was afraid I might die or something of that kind, that he wanted something to show that I signed that over to him, for the purpose of having some peace from him.

Q. You say that was about a year?

A. Yes, sir.

Q. How many copies of that assignment were made?

A. I think there were three.

Q. I mean your assignment to him?

A. I think there were two.

Q. I show you petitioner's Exhibits 4 and 5: "The testimony that I just read to you, did you give that testimony in the United States Court?

A. I have not read the documents, but I suppose it is so.

Q. What I have just read to you?

A. If you say it is so.

Q. I read it just as it is.

A. I hope it is so then.

Q. I call your attention to page 133 of your testimony in the United States Court. "When I came back from Mississippi, and I was then living on Smith Avenue, I met him and got talking about the Wilkes-Barre matter; he told me he had sold it out to Radford, and that he had got more money out of it than I would ever get.

Q. Use his exact words, as near as you can.

A. He would have nothing more to do with it; that is what he told me then.

Q. How soon was this after April 2, 1900?

A. It could not have been within a month.

Q. Within a month after April 2, 1900?

A. Yes, sir; when I came back from Mississippi?"

A. Yes, sir, I remember that conversation.

COURT: The question is did you so testify in the United States Court here?

A. Yes, sir.

* * * * * * *

26-49 COURT: I read the decision in the case of Myers vs. Luzerne County last night. That seems to me to determine that the assignment from the complainant here to his son was a valid assignment, and it seems likewise to determine that the assignment from Geo. W. Myers to the defendant was a valid assignment; however, it seems to me that the question is open here for proof and decision that the claim made by the complainant that the assignment from Geo. W. Myers to the defendant was in pursuance of

some agreement, and that the assignment was taken beneficially for the complainant. That is open here. I do not think that can be said to have been litigated, or necessarily concluded by the decision in the Federal Court.

Mr. WEADOCK: Exception.

* * * * * * *

50–74 Mr. WEADOCK: The bill was filed March 16, 1903, against Geo. W. Radford and Elijah E. Myers, and the injunction was allowed by Judge Rohnert, and the injunction was issued on March 16, 1903, and on the 16th day of March, 1903, it was served on Geo. W. Radford and Elijah E. Myers by the sheriff of Wayne County. There was an amended bill of complaint filed on the 17th day of March, 1903. The answer of the defendant Radford, and a plea was filed April 29, 1903, and Geo. C. Morse was attorney for the defendant Radford. Subpœna was never served on the defendant Myers, but the injunction was served The plea was that the entire matter in controversy had been determined in the United States Court in Pennsylvania, and the records show that the plea was sustained, and Mr. Radford won the suit and taxed up the costs against the complainant.

* * * * * * *

75–94 GEORGE W. RADFORD, defendant, sworn in his own behalf, examined by Mr. WEADOCK:

* * * * * * *

95 I then went with Mr. Major Griffin before Judge Archbald on March 30th, and made a showing why that money should be paid to me, the assignment of Geo. W. Myers to myself and the proceedings relating thereto. After that showing, Judge Archbald entered the order, as I have stated, permitting the county commissioners to pay the money into that court—in to the clerk of that court, to be held by him, giving me the right to petition that court for leave to withdraw it, which I did.

* * * * * * *

The original petition was drawn by Major Griffin and myself, in Scranton, Pa., and was signed and sworn to by me before John T. Butler, a notary public in Willard, Warren and Knapp's
96 office, on April 1, 1903, and the additional paragraph or jurat as a part of the petition was signed and sworn to by Elijah E. Myers on the same day and before the same notary public.

Upon that petition being filed, another order was entered by Judge Archbald, fixing the time in which an answer should be filed and proofs taken, and they were ordered—it is the transcript you have. The proofs taken in the United States Court, that is, before Walter S. Harsha as Master commissioner of the United States at Detroit were taken in pursuance of the petition that I have just referred to, and the orders made by Judge Archbald in the United States Court thereon.

* * * * * * *

97 After Judge Archbald's decision, which is reported in 124 Federal Reporter, and the orders entered upon it.

This is a certified copy of the order, marked Ex. 262.

98–220 Mr. WEADOCK: I offer it in evidence.

WITNESS: In which he held that the assignment from Geo. W. Myers to myself was ~~void~~ valid and awarded me the fund in court.

* * * * * * *

221 EXHIBIT 1.

For and in consideration of One Dollar ($1.00) and other valuable consideration to me paid, the receipt whereof is hereby acknowledged, I, Elijah E. Myers, do hereby sell, assign, transfer and set over unto George W. Radford all my right, title and interest in and to a certain contract for a County Building in the City of Wilkes-Barre, Pennsylvania, made and entered into by me with the County of Luzerne, by Patrick T. Morton, Thomas Smith and Thomas M. Dullard, its Board of County Commissioners, on the 22nd day of February, A. D. 1895, and in all moneys now due or to grow due thereon.

And I, said Elijah E. Myers, do hereby give the said George W. Radford, his executors, administrators and assigns, the full power and authority to ask, demand, collect, receive, compound and give acquittance for all moneys now due or to grow due to me upon said contract, and I do hereby authorize and empower said George W. Radford, in his discretion to institute suit for the collection thereof, either in my name or in his own.

In witness whereof, I have hereunto set my hand and seal this 9th day of December, 1899.

E. E. MYERS. [L. S.]

In Presence of

EDWARD WIDDIFIELD.
GEORGE C. MORSE.

STATE OF MICHIGAN,
County of Wayne:

On this 9th day of December, 1899, personally appeared before me, a Notary Public in and for said county, Elijah E. Myers,
222 to me known to be the person described in and who executed the foregoing instrument and who acknowledged the same to be his free act and deed.

[Seal George C. Morse, Notary Public, Wayne County, Michigan.]

GEORGE C. MORSE.
Notary Public, Wayne County, Michigan.

Exhibit 2.

Memorandum of Agreement, Made This 2nd Day of January, 1896, Between Elijah E. Myers, of the City of Detroit, Wayne County, Michigan, Party of the First Part, and George W. Myers, of the Same Place, Party of the Second Part.

Whereas the party of the first part hereto, did on the 22nd day of February, 1895, enter into an agreement with the commissioners of Luzerne County, Pennsylvania, for the furnishing of plans and superintendence for a county building in the city of Wilkes-Barre, Pennsylvania, and

Whereas the party of the second part is interested in said contract.

Now therefore, this agreement witnesseth that in consideration of the sum of one dollar and other valuable consideration paid by the party of the second part to the party of the first part, the party of the first part hereby sells, transfers and assigns to the party of the second part an undivided one half interest in said contract and all moneys now due and hereafter becoming due and payable upon the same.

In witness whereof the party of the first part has hereunto set his hand and seal this second day of January, 1896.

ELIJAH E. MYERS. [SEAL.]
GEORGE W. MYERS. [SEAL.]

223 Witness:
HENRY KEMP.
PERCY W. HASLETT.

State of Michigan,
County of Wayne, ss:

On this 2nd day of January, 1896, before me, a notary public in and for said county, personally appeared Elijah E. Myers and George W. Myers, known to me to be the persons who executed the foregoing instrument and acknowledged the same to be their free act and deed.

HENRY KEMP,
Notary Public.

Exhibit 3.

Memorandum of agreement, Made this 2nd day of April, A. D. 1900, between George W. Myers, of the City of Detroit, Wayne County, Michigan, of the first part, and George W. Radford, of the same place, of the second part, witnesseth:

That whereas, The said George W. Myers, by assignment dated January 2nd, 1896, made between Elijah E. Myers and George W. Myers, acquired a one half interest in and to a certain contract made and entered into between said Elijah E. Myers and the Board of County Commissioners for the County of Luzerne, in the State of

Pennsylvania for constructing a county building in the City
Wilkes-Barre, in said state, and

Whereas, the said George W. Myers desires to surrender said a
signment to said second party for the purpose hereinafter mentione

Now therefore, this agreement witnesseth, that the sa
224 George W. Myers hereby surrenders the said assignme
from said Elijah E. Myers and assigns his interest in sa
contract to George W. Radford on the following terms and cond
tions:

Said George W. Myers hereby authorizes the said George W. Rad
ford, his executors, administrators and assigns, and gives him an
them, full power and authority to ask, demand, collect, receive, com
pound and give acquittance for all moneys now due and to becom
due on his said one half interest in said contract, and the sai
George W. Myers hereby authorizes and empowers the said Georg
W. Radford, in his discretion, to prosecute the suit now pending o
to institute a new suit for the collection thereof, in the name of E. E
Myers, or in the name of the said George W. Radford; the sai
George W. Radford to account to the said George W. Myers for al
amounts received on account of said one half interest after first de
ducting therefrom One thousand dollars as attorney fee of sai
George W. Radford, also one half of all court costs and disbursement
and other legal services incurred and to be incurred in the collectio
of the moneys due or to become due under said contract.

In witness whereof, The said parties have hereunto set thei
hands and seals this second day of April, A. D. 1900.

GEORGE W. MYERS. [L. S.]
GEORGE W. RADFORD. [L. S.]

I hereby assent to the foregoing:

E. E. MYERS.

($.25 documentary revenue stamp: cancelled 4/2/1900.)

EXHIBIT 4.

(Ex. 4 is written with pen and ink and upon the bottom of Ex. 3, and reads as follows:—)

225–232 DETROIT, MICH., *Apr.* 11, 1900.

For and in consideration of one dollar and other valuable considerations to me in hand paid by George W. Radford, the receipt whereof is hereby acknowledged, I hereby sell, assign, transfer and set-over to said George W. Radford all my interest in and to the foregoing agreement, and in and to the original contract, assigned as in said above agreement specified, and I also hereby guarantee that I am the owner of a one half interest in said original contract; that I have not otherwise disposed of said contract or my interest therein, and that I have full and complete right to assign the same as herein.

In Witness Whereof I have hereto set my hand and seal the day and year first above written.

GEORGE W. MYERS. [SEAL.]

In Presence of
F. G. CHISDEY.
EDWARD WIDDIFIELD.

* * * * * * *

233 EXHIBIT 262

In the United States Circuit Court for the Middle District of Pennsylvania, February Term, 1903.

No. 3.

ELIJAH E. MYERS
v.
COUNTY OF LUZERNE.

In the Matter of Petition of GEORGE W. RADFORD to Take Money Out of Court.

At a Session of said Court Held at Scranton, in said District, on the 31st Day of July, One Thousand Nine Hundred and Three.

Present: Honorable R. W. Archbald, District Judge.

The above matter having heretofore been heard upon said petition, answers and proofs, and the same having been argued by counsel for Petitioner, as well as for the Respondent, respectively, and due consideration had thereon, it is now ordered, adjudged and decreed that the assignment from Respondent to Petitioner of the 11th day of April, one thousand nine hundred is valid, and an absolute assignment of all the interest of said Respondent in the said
234–245 contract between Elijah E. Myers and the County Commissioners of Luzerne County of date Feb. 22, 1895, and that the fund in court be awarded to Petitioner, George W. Radford; and that the claim of George W. Myers, Respondent, be dismissed with costs to be taxed against said Respondent.

[Seal United States Circuit Court, M. D. Penna.]

R. W. ARCHBALD,
District Judge.

U. S. Cir. Court, M. D. Pa.

I, A. J. Colborn, Jr., Deputy Clerk, do hereby certify *that* above order to be true and correct.

Scranton, Pa., July 31, 1903.

A. J. COLBORN,
Dep. Clerk.

* * * * * * *

246 EXHIBIT 283.

Opinion of Judge Archbald.

Reported 124 Fed., 436.

In the United States Circuit Court for the Middle District of Pennsylvania, February Term, 1903.

No. 3.

ELIJAH E. MYERS
vs.
COUNTY OF LUZERNE.

Sur Petition of GEORGE W. RADFORD to Take Money Out of Court.

ARCHBALD, *District Judge:*

On February 25, 1903, the plaintiff recovered a verdict in this case for $14,750, and the present controversy is over the ownership of one-half of it, which, on account of the conflicting claims thereto, the defendant has had leave to pay into court. Ownership is asserted on the one hand by the petitioner, George W. Radford, and on the other by George W. Myers, the plaintiff's son. Both parties, though resident in Detroit, Mich., have submitted themselves to the jurisdiction of this court by petition, answer, and extended proofs going into the entire merits, and there can be no question, under the circumstances, as to the authority of the court to determine to whom the fund belongs. Minn. Co. v. St. Paul Co., 2 Wall., 609; Morgan Co. v. Texas Cen. Ry., 137 U. S., 171; House v. Letcher, 156 U. S., 17; Havens v. Pierrek, 120 Fed., 244.

The money in court was recovered on a contract entered into February 22, 1895, between Elijah E. Myers, an architect of Detroit, Mich., and the County Commissioners of Luzerne County, Pa., for plans for the construction of a new Court House at Wilkes Barre. Col. Myers was to receive 5 per cent. on the cost of the building, of which $5000 was to be paid down; $5000 when modified sketches had been prepared and delivered; and $10,000 on the delivery of complete working drawings. The rest was not to be due
247 unless the court house was built, and as it never was, it is of no significance. Col. Myers complied with his part of the contract and was paid the first two installments of $5000 each; but upon delivery of the working drawings, he was met with a refusal on the part of the County to pay the $10,000 thereby due. After several ineffectual attempts to secure the money, the case was put in the hands of John T. Lenahan, a prominent attorney of Wilkes-Barre, Pa., who in July, 1895, brought suit in the courts of Luzerne County. Though Mr. Lenahan expressed himself as confident of winning the case, nothing further was done until some time in 1897 or 1898, when, on account of the danger of local prejudice, applica-

tion was made for a change of venue, and after a further delay of two or three years, was finally allowed by the court, November 9, 1900, to the neighboring county of Columbia.

In the meantime the plaintiff, on January 2, 1896, assigned a half interest in the contract to his son, George W. Myers. It is said by Col. Myers that this was brought about by importunity, and was without consideration, except the promise of his son to assist in the prosecution of the case, which was not carried out. On the other hand, it is said by the son that he held notes of his father to the amount of $32,500, which had been given him for securing the contract, and which he destroyed at the time of the assignment. This is denied by the father, and so far as it is necessary to the case, I am prepared to find that it is not true. At the same time he was authorized to draw the first two payments for his father, out of which he retained $6000 without apparent demur; and it was he also who put the case in Mr. Lenahan's hands, which seems to imply some control over it. But it is not material. The assignment from his father gave him a half interest for the time, and that is all we need to know. It is by virtue of it that he makes his present claim.

The first connection that George W. Radford had with the
248 case was as attorney for the plaintiff, Elijah E. Myers. In September, 1899, when no progress seemed to be made, Col. Myers, who had long been his client, consulted him with regard to it. Mr. Radford at once took the matter up with Mr. Lenahan, writing him numerous letters, but without results, except to learn that, as already stated, on account of local prejudice, application had been made for a change of venue. This was the condition when, on December 9, 1899, Col. Myers, to whom Mr. Radford had made several previous loans of money, applied to him for additional accommodation, and proposed to turn over his interest in the contract as collateral security. He asked for a hundred dollars, which, with that already advanced, would amount, as was figured to over $1,600. Col. Myers explained to Mr. Radford that one-half interest had already been assigned to George, and it was recognized that if he held on to the assignment, there would be little, if anything, coming to Col. Myers after he had settled with Radford. But it was stated by Col. Myers that the assignment was without consideration, and if he succeeded, as he hoped, in getting George to surrender it, then Radford was to account to him for that interest also, after deducting for expenses and services. The trust relation so established still continues.

So the matter stood until the next April. At that time George, who had been several times ineffectually approached by both his father and Radford, came forward with the proposition to turn over his interest to Radford on condition that the latter would go on and prosecute the suit and account to him for one-half of what he recovered, after deducting a fee of $1000 which Radford was to have as attorney, and half of the necessary disbursements. This was agreed to and a writing executed April 2, 1900, by which on the conditions named, he assigned and surrendered his interest to Radford; to which Col. Myers, who was present, gave his assent. Sub-

ject to the duty of accounting, this vested in Radford entire control of the matter.

249 On April 11, 1900, nine days later George W. Myers came to Mr. Radford's law office in Detroit, and wanted to know what he would give in cash for his interest, offering to make an absolute assignment and step out altogether, as he expressed it. Radford told him he was satisfied with the existing arrangement, but George said he had to have the money, and wanted Radford to give him $1000 for it. This he refused to do, and declined to make any offer, telling him that his father, as he knew, claimed he had no actual interest, and that if he paid him anything, Col. Myers could subsequently question it. George insisted that his interest was worth something, which, being conceded, he offered it for $750, and when that was refused kept coming down until finally Radford agreed to take it at $150. This was paid by check and an assignment executed, Radford exacting a guarantee that George was the owner of the interest and had not otherwise disposed of it, and George at the same time giving up the agreement of April 2nd, which embodied the existing arrangement between them. This assignment was absolute in form and was intended by George as a complete disposition to Radford for $150 of the half interest derived from his father. The case turns upon the character and validity of it.

It is testified by George W. Myers that the transaction of April 2nd was a loan and not a sale; that it was to be repaid when the money was collected on the contract, or, as he says at another place, when he could; and that the assignment was simply to stand as collateral security. It is further and not very consistently charged that it was obtained from him in its present absolute form by misrepresentation, Radford stating at the time, as it is said, that the assignment from his father of a half interest was good for nothing because of a previous assignment to him, Radford. This is so contradicted at every point by the other testimony in the case that I am convinced it is not true. At the outstart the assignment itself, which,

250 as we have seen, is absolute in terms, would have to be reformed, and there is everything to confirm rather than to disturb it or authorize a change. Not only have we the statement of Mr. Radford as to what occurred at the time, which I believe, but his testimony is sustained in part at least by that of Edward Widdifield, who was then a stenographer in Radford's office and was called in to witness the paper. After he had returned again to his own room, he says that George W. Myers came out angry and swearing, and having asked what was the trouble, says he had got rid of the damned Wilkes-Barre matter and guessed he had got as much out of it as the old man would after Radford was through with him. George also told his sister, Florence, some time later, in the presence of his mother, that he had sold out his interest and had nothing more in it and did not think his father would ever get anything out of it. His mother also testifies that he frequently told her he had sold out to Radford; and he said the same thing to his father soon after the occurrence. This he also repeated in February last when the new suit brought in this court was coming up for trial. Having

en told by his father that Radford wanted to see him about the ntract, he replied that he had sold out the damned thing and did t want anything more to do with it, a position he consistently main- ined when Radford telephoned him the day before Col. Myers and started for Scranton. It cannot be expected that his single and supported oath will prevail against the force of this combined d contradictory proof; nor that the belated interest which he anifested when he learned of the large verdict that had been re- vered—stirring around to get nine twenty dollar gold pieces and ndering them to Mr. Radford—will do away with the effect of s previous declarations and indifference.

It is urged, however, that by the arrangement of April 2nd, 1900, dford became the attorney of George W. Myers, undertaking for a contingent fee of $1000 to prosecute to a conclusion the pending suit, or such other as might be instituted; and that because of this relation the assignment of April 11, even if ken as a sale, cannot be enforced. It must be confessed that the reement referred to, to the extent specified, established the rela- n of attorney and client; and, although it may be that the mov- g purpose in the mind of Radford was to secure control of the se without chance of interference by which the other was obscured, not lost sight of, we cannot disregard the fact that he was to ac- unt to George in the end for all that he got over and above the mpensation and deductions agreed upon whether it was large or tle. Neither is it an answer to the argument to say that the claim- t by the agreement is not in any event entitled to the fund but ly to an accounting by Radford out of it. Assuming it to be so, e present proceedings are sufficiently elastic to enable the court to fer the case to a master to take an account, if the claimant has herwise established a right to it. The case, in my judgment, does t turn upon that question. Admitting all that has been said with gard to the relation between the parties, the sale to Radford is not cessarily invalid. An attorney is not prohibited from making y bargain whatever with his client, but only from taking undue dvantage of him, with the burden upon them of showing that he s not. The rule is thus laid down in 3 Am. & Eng. Law, p. 232: In all dealings with his client the highest degree of fairness and ood faith is required of the attorney; the courts view all such trans- tions with suspicion and examine them with the utmost scrutiny, nd if they present even a suggestion of unfair dealing, the burden proof lies on the attorney to show the honesty and good faith of e transaction, and that it was entered into by his client freely and nderstandingly." This is a clear and comprehensive statement of e law by recognized authority, and we do not need to go further for it. It means no more, however, after all than, as has just been said, that the attorney is not allowed to take advantage of the relation or the confidence which it begets, to the detri- ent of his client. His duty is to look after his client's interests nd not to bargain for them, and the temptation induced by a benefit himself in that way is to be avoided. But it cannot be said that ere is anything that calls for intervention upon that ground here,

George W. Myers does not lack in business shrewdness, and he knew fully as much about the subject matter of the bargain as did the attorney with whom he was dealing. He came to him of his own accord determined to sell, and he finally brought down his price to the point where the other was willing to take the risk involved and buy. What was so bought and paid for was the doubtful outcome of a law suit which had dragged its slow length along for nearly five years. By the existing arrangement Radford was already assured of the first $1000 recovered and his disbursements; and George's interest was represented only by what was over above that, and it was for that, that they dealt. We must look at the case as it then stood, and not as it has now turned out. A law suit is always an uncertainty, and none more so perhaps at the time than this one. Nearly three years still went by before there was any result or even an approach to it. A new suit with the aid of new counsel having been brought in this court last January and a speedy trial reached, the plaintiff got a verdict, but it was simply because the defendant was found to rely upon an equity, which, as is well established, cannot be asserted in an action at law in a Federal court. A contemporaneous parol understanding was attempted to be set up that the cost of the building for which Col. Myers was to furnish plans should not exceed a certain sum. This defense would have been entirely available in the State Court where the first action was brought, and with the jury sitting as Chancellors, and proof being made that $10,000 had already been paid the Architect for what he had done, it is not difficult to presage the result. Aside from this it
253 was open to the County also to have had the contract reformed by bill to the same effect, if able to command the required proof. It is true that it was not known at the time of the sale to Radford that this was the defense. It is only referred to to show upon what a narrow point the case finally turned. As was well said at the argument, the plaintiff won on the letter of his bond. But it was known that the case in the hands of able counsel, who continued in it to the end, had dragged along for years in the State court, and that to avoid certain prejudices of the local jury in one County, had been transferred at last to another, where much the same prejudice against the case was likely to prevail; and no one understood better than George W. Myers, who claims that he secured the original contract from the County Commissioners, what infirmities might lurk in it thereby. The most he asked for was $1000 but finally took $150, and not only at the time but after he had had abundant opportunity to think it over, expressed himself as content with his bargain. It is useless to suggest, under such circumstances, that advantage was taken of him, or that Mr. Radford profited by the confidence induced by the relation, to get from him what he had. As the case has turned out, it would have been better, of course, if he had held on to his interest, but to undo the transaction upon that ground, which is really the only one there is, would be an unwarranted stretch of power.

Let an order be drawn awarding the fund to the petitioner.

George W. Radford, and dismissing the claim of George W. Myers with costs.

(Sgd.) R. W. ARCHBALD,
District Judge.

Levi T. Griffin, for Geo. W. Radford.
James D. May, for Geo. M. Myers.

Filed July 29, 1903.

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EXHIBIT 284.

MYERS
vs.
RADFORD.

The original amount of the judgment, interest and costs, none of which was paid directly to Mr. Radford	$14,918.79
Of this amount Mr. Radford received only	$12,711.23
Mr. Radford is entitled to following credits:	
Total expenses, disbursements and loans to Col. Myers by Mr. Radford, including no interest and debt on notes	$11,234.46
Interest up to March 17, 1903, only	$1,007.88
	$12,242.34
Due to Geo. W. Radford for services in these cases and also in other matters	$4,625.00
Total amount due Mr. Radford	$16,867.34
Deduct total judgment, costs, etc.	14,918.79
Net balance due Geo. W. Radford, not including the interest since March 17, 1903	$1,948.55

Loans, Costs, Expenses, Etc., of George W. Radford.

Dates.		Principal sums.	Interest thereon.
Dec. 9, 1899.	Note, at 6% interest	$4,613.60	
	6% int. Dec. 9, '99 to M'ch 17, '03—3 yrs. 99 das.		$905.88
Dec. 12, 1899.	Note, at 6% interest	100.00	
	6% int. Dec. 12, '99 to M'ch 17, '03—3 yrs. 95 days		19.58
Jan. 21, 1900.	Expenses to Wilkes-Barre, including injunction transcripts	85.00	
255	5% int. Jan. 21, '00 to M'ch 17, '03—3 yrs. 55 das		13.74

M'ch 10, 1900.	Check to E. E. Myers (Check Bk. #16, Ck. #115, $10)	10.00	
	5% int. M'ch 10, '00 to M'ch 17, '03—3 yrs. 7 das.....		1.51
Apr. 2, 1900.	Check to E. E. Myers (Ck. Bk. 16, Ck. 148, $125.00)	125.00	
	5% int. Apr. 2, '00 to M'ch 17, '03—2 yrs. 349 das...		18.54
Apr. 11, 1900.	Paid Geo. W. Myers for assignment (Ck. Bk. 16, Ck. 168, $150.00).....	150.00	
	5% int. April 2, '00 to M'ch 17, '03—2 yrs. 340 das....		22.08
Jan. 18, 1901.	Cash loaned to E. E. Myers (Due Bill)	15.00	
	5% int. Jan. 18, '01 to M'ch 17, '03—2 yrs. 58 das....		2.37
Mar. 6, 1901.	Cash loaned to E. E. Myers (Due Bill)	17.00	
	5% int. M'ch 6, '01 to M'ch 17, '03—2 yrs. 11 das....		1.73
Mar. 21, 1901.	Cash loaned to E. E. Myers (Due Bill)	10.00	
256			
	5% int. Mar. 21, '01 to M'ch 17, '03—1 yr. 356 das....		1.00
Apr. 21, 1901.	Cash loaned to E. E. Myers (Due Bill)	22.00	
	5% int. April 21, '01 to M'ch 17, '03—1 yr. 330 das...		2.10
Apr. 25, 1901.	Cash loaned to E. E. Myers (Due Bill)	11.00	
	5% int. Apr. 25, '01 to M'ch 17, '03—1 yr. 326 das....		1.04
May 28, 1901.	Cash loaned to E. E. Myers (Due Bill)	21.00	
	5% int. May 28, '01 to M'ch 17, '03—1 yr. 293 das....		1.90
June 7, 1901.	Cash loaned to E. E. Myers (Due Bill)	7.00	
	5% int. June 7, '01 to M'ch 17, '03—1 yr. 283 das....		.62
Aug. 10, 1901.	Cash loaned to E. E. Myers (Due Bill)	25.50	
	5% int. Aug. 10, '01 to M'ch 17, '03—1 yr. 219 das....		2.01
Oct. 9, 1901.	Check loaned to E. E. Myers (Ck. Bk. 17, Ck. 759, $20.00)	20.00	
	5% int. Oct. 9, '01 to M'ch 17, '03—1 yr. 159 das....		1.44

Dec. 20, 1901.	Expenses to Wilkes-Barre, including Columbia County Transcript		75.00	
257	5% int. Dec. 20, '01 to M'ch 17, '03—1 yr. 87 das.....			4.62
Apr. 3, 1902.	Cash loaned to E. E. Myers (Due Bill)		35.00	
	5% int. Apr. 3, '02 to M'ch 17, '03—348 das.....			1.69
May 8, 1902.	Cash loaned to E. E. Myers (Due Bill).....		10.00	
	5% int. May 8, '02 to M'ch 17, '03—313 das.....			.43
June 7, 1902.	Cash loaned to E. E. Myers (Due Bill)		15.00	
	5% int. June 7, '02 to M'ch 17, '03—283 das.....			.59
July 1, 1902.	Ck. to E. E. Myers (Ck. Bk. 17 Ck. 1095—86)		6.90	
	5% int. July 1, '02 to M'ch 17, '03—260 das.....			.21
July 30, 1902.	Cash loaned to E. E. Myers (Due Bill)		35.00	
	5% int. July 30, '02 to M'ch 17, '03—231 das.....			1.12
Sept. 16, 1902.	Cash loaned to E. E. Myers (Due Bill)		32.00	
	5% int. Sept. 16, '02 to M'ch 17, '03—183 das.....			.81
Dec. 5, 1902.	Cash loaned to E. E. Myers (Due Bill)		30.00	
	5% int. Dec. 5, '02 to M'ch 17, '03—102 das.....			.43
Dec. 15, 1902.	Paid expenses to Scranton..		65.00	
258	5% int. Dec. 15, '02 to M'ch 17, '03—92 das.....			.83
Dec. 27, 1902.	Cash loaned to E. E. Myers (Due Bill)		77.00	
	5% int. Dec. 27, '02 to M'ch 17, '03—80 das.....			.84
Feb. 5, 1903.	Check to E. E. Myers (Ck. Bk. 18, Ck. 1293, $15)..		15.00	
	5% int. Feb. 5, '03, to M'ch 17, '03—40 das.....			.08
Feb. 21, 1903.	Cash loaned to E. E. Myers (Due Bill)		41.50	
	5% int. Feb. 21, '03 to M'ch 17, '03—24 das.....			.14

Feb. 27, 1903.	Expenses E. E. Myers & Geo. W. Radford, to Scranton & return	152.00	
	5% int. Feb. 27, '03 to M'ch 17, '03—18 das.		.38
M'ch 6, 1903.	Cash loaned to E. E. Myers (Due Bill $60 inc. Ck. Bk. 18, Ck. 1321, $25)	60.00	
	5% int. March 6, '03 to M'ch 17, '03—11 das.		.09
M'ch 2, 1903.	Ck. to E. E. Myers (Ck. Bk 18, Ck. 1313, $25)	25.00	
	5% int. M'ch 2, '03 to M'ch 17, '03—15 das.		.05

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Dates.		Principal sums.
M'ch 19, 1903.	Cash loaned to E. E. Myers (Due Bill)	10.00
M'ch 20, 1903.	Cash loaned to E. E. Myers (Due Bill)	20.00
M'ch 27, 1903.	Paid Jos. Moore, Atty Wilkes-Barre, for information—(Ck. Bk. 18, Ck. 1358, $10)	10.00
M'ch 28, 1903.	Cash loaned to E. E. Myers (Due Bill)	13.50
Apr. 2, 1903.	Willard, Warren & Knapp statement. Record costs paid by them 45.68 Amt. pd. J. P. Butler, Steno., $20.00. Willard, Warren & Knapp, & Levi T. Griffin, services $1,000.00. Jno. T. Lenahan, services & costs $514.35	1,580.03
Apr. 3, 1903.	Expenses E. E. Myers & G. W. Radford to Scranton	126.00
Apr. 4, 1903.	Ck. to E. E. Myers (Ck. Bk. 18, Ck. 1366—$35)	35.00
Apr. 29, 1903.	Cash loaned to E. E. Myers (Due Bill $13 and Due Bill $40)	53.00
May 5, 1903.	Ck. to E. E. Myers (Ck. Bk. 18, Ck. 1397, $35	35.00
May 7, 1903.	Paid Edward Widdifield—Expenses, etc., to Detroit (Ck. Bk. 18, Ck. 1399, $40)	40.00
May 15, 1903.	Walter S. Harsha—Examiner— (Ck. Bk. 18) 9.50 (Ck. 1404 $191) 24.80 and 3 receipts) 156.70	191.00

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May 18, 1903.	Check to E. E. Myers (Ck. Bk. 18 Ck. 1405 $15)	15.00
May 26, 1903.	Expenses to Scranton—Geo. Myers Contest	70.00

19, 1903.	Cash loaned to E. E. Myers (Due Bill $170 Ck. Bk. 18 Ck. 1420 $40 included)		170.00
22, 1903.	Check to E. E. Myers (Ck. Bk. 18 Ck. 1423 $20)		20.00
27, 1903.	Cash loaned to E. E. Myers (Ck. Bk. 18 Ck. 1436 $10 Due Bill $30		30.00
6, 1903.	Cash loaned to E. E. Myers (Due Bill)		20.00
24, 1903.	Cash loaned to E. E. Myers (Due Bill $43 Ck. Bk. 18 Ck. 1445 $40)		43.00
5, 1903.	Cash loaned to E. E. Myers (Due Bill)		18.00
19, 1903.	Cash loaned to E. E. Myers (Due Bill)		20.00
22, 1903.	Willard, Warren & Knapp—2nd statement Clerk's commission on money in court	$74.73	
	Ordered left in court	35.00	
	Clerk's fees	5.10	
	Griffin telegrams and expenses Wilkes Barre	8.00	
	Expenses Judge Knapp to Wilkes Barre taking Lenahan Deposition	1.70	
	Extra stenographer on Brief.	3.00	
	Willard, Warren & Knapp services in Geo. Myers contest	500.00	
			627.53
25, 1903.	Cash loaned to E. E. Myers (Due Bill $40 Ck. Bk. 18, Ck. 1498 $40		40.00
26, 1903.	Decree fee—Geo. Myers—Wayne Ch'y Case, Ck. Bk. 18 Ck. 1502 $7		7.00
5, 1903.	Cash loaned to E. E. Myers (Due Bill)		17.00
19, 1903.	Cash loaned to E. E. Myers (Due Bill $52 Ck. Bk. 18 Ck. 1520 $40)		52.00
30, 1903.	Cash loaned to E. E. Myers (Due Bill)		15.00
10, 1903.	Cash loaned to E. E. Myers (Due Bill)		20.00
22, 1903.	Cash loaned to E. E. Myers (Due Bill $25 Ck. Bk. 18 Ck. 1560 $20)		25.00
27, 1903.	Check to E. E. Myers (Ck. Bk. 18 Ck. 1570 $10)		10.00
31, 1903.	Cash loaned to E. E. Myers (Due Bill $45 Ck. Bk. 18 Ck. 1575 $34)		45.00
7, 1903.	Cash loaned to E. E. Myers (Due Bill)		7.00
12, 1903.	Cash loaned to E. E. Myers (Due Bill)		11.00
25, 1903.	Cash loaned to E. E. Myers (Due Bill $41 Ck. Bk. 18 Cks. 1592 $30 & 1593 $10)		41.00
6, 1904.	Cash loaned to E. E. Myers (Due Bill)		57.00
7, 1904.	Ck. to E. E. Myers (Ck. Bk. 18 Ck. 1618 $50)		50.00
14, 1904.	Cash loaned to E. E. Myers (Due Bill)		10.00

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Jan.	18, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Jan.	26, 1904.	Cash loaned to E. E. Myers (Due Bill $40 Ck. 1627 $10 1628 $30)	40.00
Jan.	30, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Feb.	4, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Feb.	8, 1904.	Cash loaned to E. E. Myers (Due Bill $35 Ck. Bk. 18 Ck. 1637 $35)	35.00
Feb.	13, 1904.	Cash loaned to E. E. Myers (Due Bill)	11.00
Feb.	24, 1904.	Cash loaned to E. E. Myers (Due Bill 50 2-23-04 Ck. 1644 $50)	50.00
Mar.	4, 1904.	Ck. to E. E. Myers (Ck. Bk. 18 Ck. 1652 $10)	10.00
Mar.	10, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Mar.	28, 1904.	Cash loaned to E. E. Myers (Due Bill $47 Ck. Bk. 18 Ck. 1682 $47)	47.00
Mar.	31, 1904.	Cash loaned to E. E. Myers (Due Bill $10 Ck. Bk. 18 Ck. 1683 $10)	10.00
Apr.	9, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Apr.	19, 1904.	Cash loaned to E. E. Myers (Due Bill)	11.50
May	5, 1904.	Cash loaned to E. E. Myers (Due Bill)	32.00
May	16, 1904.	Cash loaned to E. E. Myers (Due Bill)	20.00
June	2, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00

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June	9, 1904.	Cash loaned to E. E. Myers (Due Bill)	12.00
June	18, 1904.	Cash loaned to E. E. Myers (Due Bill $20 Ck. Bk. 18 Ck. 1743 $15)	20.00
June	25, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
July	8, 1904.	Cash loaned to E. E. Myers (Due Bill)	35.00
July	20, 1904.	Cash loaned to E. E. Myers (Due Bill)	8.00
July	23, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Aug.	1, 1904.	Check to E. E. Myers (Ck. Bk. 18 Ck. 1767 $38)	38.00
Aug.	10, 1904.	Cash loaned to E. E. Myers (Due Bill)	15.00
Aug.	22, 1904.	Cash loaned to E. E. Myers (Due Bill)	15.00
———	——, 1904.	Cash loaned to E. E. Myers (Due Bill dated ——— —, 1904)	5.00
Sept.	9, 1904.	Cash loaned to E. E. Myers (Due Bill $30 Ck. Bk. 18 Ck. 1796 $30)	30.00
Sept.	28, 1904.	Cash loaned to E. E. Myers (Due Bill)	7.00
Oct.	1, 1904.	Cash loaned to E. E. Myers (Ck. Bk. 18. Ck. 1838 $30 Due Bill $30	30.00
Oct.	13, 1904.	Cash loaned to E. E. Myers (Due Bill $15 Ck. Bk. 18 Ck. 1850 $10)	15.00
Oct.	25, 1904.	Cash loaned to E. E. Myers (Due Bill $35 Ck. Bk. 18. Ck. 1862 $35)	35.00
Nov.	4, 1904.	Cash loaned to E. E. Myers (Due Bill)	5.00
Nov.	16, 1904.	Cash loaned to E. E. Myers (Due Bill)	7.00

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Dec.	5, 1904.	Cash loaned to E. E. Myers Due Bill $40 Ck. Bk. 19 Ck. 10923 $35 $35..	40.00
Dec.	16, 1904.	Cash loaned to E. E. Myers (Due Bill)	10.00
Dec.	30, 1904.	Cash loaned to E. E. Myers (Due Bill $15 Ck. Bk. 19 Ck. 10958 $14.50).	15.00
Jan.	3, 1905.	Check to E. E. Myers (Ck. Bk. 19 Ck. 10965 $35)	35.00
Jan.	9, 1905.	Cash loaned to E. E. Myers (Due Bill $5 Ck. Bk. 19 Ck. 10792 $5	5.00
Jan.	30, 1905.	Cash loaned to E. E. Myers (Due Bill)	10.00
Feb.	10, 1905.	Cash loaned to E. E. Myers (Due Bill)	15.00
Feb.	15, 1905.	Cash loaned to E. E. Myers (Due Bill)	11.00
March	14, 1905.	Cash loaned to E. E. Myers (Due Bill)	16.00
April	5, 1905.	Cash loaned to E. E. Myers (Due Bill)	5.00
April	15, 1905.	Cash loaned to E. E. Myers (Due Bill)	13.00
April	24, 1905.	Cash loaned to E. E. Myers (Due Bill)	25.00
May	13, 1905.	Cash loaned to E. E. Myers (Due Bill $20 Ck. Bk. 19 Ck. 11047 $20.	20.00
May	31, 1905.	Cash loaned to E. E. Meyers (Due Bill $16 Ck. Bk. 19 Ck. 11062 $15)	16.00
June	9, 1905.	Cash loaned to E. E. Myers (Due Bill)	10.00
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June	14, 1905.	Check to E. E. Myers (Ck. Bk. 19 Ck. 11071 $10)	10.00
June	28, 1905.	Cash loaned to E. E. Myers (Due Bill $25 Ck. Bk. 19 Ck. 11077 $15)	25.00
July	1, 1905.	Cash loaned to E. E. Myers (Due Bill)	15.00
July	8, 1905.	Cash loaned to E. E. Myers (Due Bill)	10.00
July	17, 1905.	Cash loaned to E. E. Myers (Due Bill $5 Ck. Bk. 19 Ck. 11128 $5)	5.00
July	25, 1905.	Cash loaned to E. E. Myers (Due Bill)	5.00
Aug	4, 1905.	Cash loaned to E. E. Myers (Due Bill $25 Ck. Bk. 19 Ck. 11159 $25)	25.00
Aug.	19, 1905.	Cash loaned to E. E. Myers (Due Bill $12 Ck. Bk. 19 Ck. 11179 $10)	12.00
Sept.	5, 1905.	Cash loaned to E. E. Myers (Due Bill)	20.00
Sept.	16, 1905.	Cash loaned to E. E. Myers (Due Bill $42 Ck. Bk. 19 C. 11195 $35)	42.00
——	15, 1905.	Cash loaned to E. E. Myers (Due Bill)	11.00
Oct.	11, 1905.	Cash loaned to E. E. Myers (Due Bill)	55.00
Oct.	28, 1905.	Cash loaned to E. E. Myers (Due Bill)	6.00
Oct.	31, 1905.	Cash loaned to E. E. Myers (Due Bill)	5.00
——	—, ——.	Cash loaned to E. E. Myers (Due Bill)	40.00
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Jan.	20, 1906.	Cash loaned to E. E. Myers (Due Bill)	21.00
Feb.	3, 1906.	Cash loaned to E. E. Myers (Due Bill $35.30 Ck. Bk. 19 Ck. 11295 $30)	35.30
Feb.	6, 1906.	Cash loaned to E. E. Myers (Due Bill $12 Ck. Bk. 19 Ck. 11297 $12)	12.00

Feb. 23, 1906.	Cash loaned to F. E. Myers (Due Bill)	15.00
Mar. 10, 1906.	Cash loaned to E. E. Myers (Due Bill)	45.00
Apr. 2, 1906.	Cash loaned to E. E. Myers (Due Bill) $11.50 Ck. Bk. 19 Ck. 11353 $10. .	11.50
Apr. 9, 1906.	Cash loaned to E. E. Myers (Due Bill $35 Ck. Bk. 19 Ck. 11355 $35)	35.00
Apr. 24, 1906.	Cash loaned to E. E. Myers (Due Bill)	10.00
May 7, 1906.	Cash loaned to E. E. Myers (Due Bill $41.50 Ck. Bk. 19 Ck. 11378 $40) .	41.50
July 17, 1906.	Cash loaned to E. E. Myers (Due Bill)	13.00
Aug. 11, 1906.	Cash loaned to E. E. Myers (Due Bill)	10.25
Aug. 22, 1906.	Cash loaned to E. E. Myers (Due Bill)	5.00
Aug. 27, 1906.	Cash loaned to E. E. Myers (Due Bill)	5.00
Sept. 1, 1906.	Cash loaned to E. E. Myers (Due Bill)	5.00
Sept. 12, 1906.	Cash loaned to E. E. Myers (Due Bill)	6.00
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Sept. 22, 1906.	Cash loaned to E. E. Myers (Due Bill $10 Ck. Bk. 20 Ck. 11466 $7.25. . . .	10.00
Oct. 2, 1906.	Cash loaned to E. E. Myers (Due Bill)	5.25
Oct. 10, 1906.	Cash loaned to E. E. Myers (Due Bill)	13.00
Oct. 31, 1906.	Cash loaned to E. E. Myers (Due Bill)	6.50
—— —, ——.	Cash loaned to E. E. Myers (Due Bill)	35.00

Professional Services.

Services in main case—Elijah E. Myers v. Luzerne County, Pennsylvania, from September, 1899, to March, 1903	$2,500.00
Services in George W. Myers Contest in Pennsylvania and in Detroit—two cases	$1,500.00
Services in Mississippi matter	$250.00
Services in Kentucky Matter	$250.00
Services relative to addition to Michigan Capital at Lansing	$100.00
Services in Howell, Mich., matter	$25.00
Services of Thos. A. E. Weadock on Geo. Myers contest and matters connected therewith	$250.00
	$4,875.00

* * * * * * *

274 At the request of counsel for the defendant and cross-complainant, and after due notice to the adverse party, and with the consent of all counsel, and within the time extended therefor, by the stipulation of counsel and the orders of this Court, the said circuit judge, Hon. Alfred J. Murphy, who heard said cause being absent from the state, by consent of the parties the Hon. J. W. Dunovan has settled the foregoing transcript of the testimony or case on appeal together with the exhibits, setting forth, briefly, the evidence taken upon the hearing of said cause.

And it is certified that insofar as said testimony is set forth by

question and answer, the same is necessary for the determination of the questions presented upon said appeal.

Signed and settled this 5th day of August, 1910.

(Sgd.) J. W. DONOVAN,
Circuit Judge.

On behalf of the complainant we hereby consent that because of the absence from the state of Hon. Alfred J. Murphy, the Circuit Judge who heard said cause, the foregoing transcript or case on appeal together with the exhibits as stated may be settled and signed before any other Circuit Judge for Wayne County, at any time, without further notice to us.

(Sgd.) C. K. LATHAM AND
WM. C. STUART,
Solicitors for Complainant.

Dated, Detroit, August 4, 1910.

* * * * * * *

275 *Revivor.*

(Elijah E. Myers, original complainant, died on March 5, 1909, after this cause was heard. On April 17, 1909, letters testamentary were issued to Mary D. Myers. On June 30, 1909, this cause was revived in the name of said Mary D. Myers as Executrix of Estate of Elijah E. Myers, deceased.)

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

No. 32120.

ELIJAH E. MYERS, Complainant,
vs.
GEORGE W. RADFORD, Defendant.

The bill herein was filed for an accounting. The defendant coupled with his answer a cross-bill seeking like relief. The facts in controversy were carefully canvassed upon an extended hearing. While my conclusions were quite definitely formed at the termination of the hearing, I have since had recourse to much of the documentary proof in order that these tentative conclusions might, with deliberation, either be adhered to or departed from, and in
276 order that the position so taken might have the full concurrence of the conscience and judgment of the court.

Little was said upon the argument as to the legal doctrines applicable to the case, this phase of the case being disposed of by the statement that they were not in dispute, and it being assumed evidently that they are not open to serious question. I have endeavored, however, to give the legal aspects of the case some study, which has resulted in the conclusion that the facts being once estab-

lished, it seems to me there can be little disagreement, if any, about the relative legal rights and legal duties of the parties. Let me, then, state the facts which I find to be established by the proofs.

For many years prior to December 9, 1899, the complainant, Elijah E. Myers, had been a client of the defendant, George W. Radford, a member of this bar. Upon that day a balance of account was mutually struck, and the complainant was found to be indebted to the defendant in the sum of $4,613.60. This debt was then evidenced by a promissory note, bearing interest at six per cent given by Colonel Myers to Mr. Radford. Their antecedent relations are not in anywise involved in this suit save only as the services performed by the defendant, and upon which the case mainly turns, may be said to have commenced in September, 1899. Furthermore this promissory note is neither attacked, nor, upon the proofs, is it open to attack.

Collateral to the payment of the note, and simultaneously with its execution Colonel Myers assigned to Mr. Radford his half interest in and to a claim to $10,000 against the County of Luzerne, Pa. The other half had already been assigned by the complainant to his son, George W. Myers. This claim was in litigation in the state court at Wilkes-Barre, Pa., in a suit in which Colonel Myers was plaintiff and the County Commissioners of Luzerne County, Pa., defendants, and was brought to recover the sum mentioned for services rendered upon a written contract for stipulated architec-
277 tural fees, the terms of which contract were unequivocal.

The suit had been begun in 1895 through counsel in Wilkes-Barre, who was sole attorney of record. It was pending, untried, when in September, 1899, Colonel Myers with the view of expediting its determination, consulted Mr. Radford in reference to it. After acquiring the assignment of complainant's interest to the claim, Mr. Radford began an energetic effort to procure information from the Wilkes-Barre counsel as to the status of the case. In January, 1900, he visited Wilkes-Barre. Upon April 11, 1900, he purchased in his own name for the sum of $150, by an assignment, absolute upon its face, all of the interest of George W. Myers, the son, in and to the claim.

Much correspondence with the Wilkes-Barre attorney ensued, and a further visit was paid to Wilkes-Barre by Mr. Radford in December, 1901. But in the face of repeated and urgent demands of Mr. Radford for action, no effort to press the suit was made by the Wilkes-Barre attorney. The former's letters were unanswered, his demand ignored, and, other than securing an order for a change of venue, the suit, in spite of Mr. Radford's repeated and urgent letters, had not, upon September 24, 1902, been advanced in its prosecution since the defendant's connection with it.

Upon this last mentioned day, Mr. Radford wrote of the plight in which both he and the suit were thus put, to the late Major Levi T Griffin, of this bar, who was then, however, practicing in Scranton, Pa. There followed correspondence between Mr. Radford and Major Griffin, in which the latter was requested to investigate the status of the Wilkes-Barre suit and to examine the legal questions involved.

The defendant's letter of September 30, 1902, is an important link in this chain of correspondence. Mr. Griffin advised the commencement of suit in the United States Circuit Court for the Middle District of Pennsylvania, notwithstanding the pendency of the
278 suit in the state court. As to this suggestion, the defendant wrote Mr. Griffin upon November 14, 1902, as follows:

"Now, however, that I feel the matter is in safe hands, I shall be guided entirely by what you advise in this respect."

Mr. Griffin gave the matter immediate and aggressive attention. The legal aspects of the matter received his prompt and thorough investigation. This resulted in his receiving instructions from Mr. Radford, by letter, of date, January 17, 1903, to bring suit in the Federal Court named. Upon January 23, 1903, Mr. Griffin instituted the suit, with himself as attorney of record, and with Messrs. Willard, Warren and Knapp, of Scranton, the firm with whom he was associated, and John T. Lenahan, the Wilkes-Barre attorney in question, as counsel. It was deemed advisable for reasons of policy to include the latter. Under Mr. Griffin's management the case proceeded to an early trial, and on February 25, 1903, a verdict for the full sum claimed and interest, amounting in all to $14,750 was rendered.

Soon thereafter George W. Myers intervened in the case, claiming to be the owner of one-half of the judgment, and basing this contention upon the claim that his half interest in the original contract had been procured by the defendant herein fraudulently. An appropriate issue was framed, depositions were taken in Wilkes-Barre and Detroit, and the son was defeated in his contention. The latter had also started a suit upon the chancery side of this court against both his father and this defendant, seeking to set aside the assignment he had made to Mr. Radford. With the unsuccessful termination of the son's effort to reach the judgment, the suit in this circuit was abandoned, and was finally dismissed without hearing. In this latter suit the defendant herein was solicitor of record for both himself and Colonel Myers.

By August 22, 1903, the judgment, which had then grown to $14,918.79 had been paid in full. For services in the main case and in the intervention of George W. Myers, Major Griffin
279 and Messrs. Willard, Warren and Knapp received the sum of $1500, of which $500 was for services rendered in the latter matter. Mr. Lenahan was given $500 for such services as he performed. The defendant herein claims to be entitled to $4000 for services rendered by him in these two matters, $1500 of which is claimed for services performed in the two proceedings begun by the son.

Upon August 22, 1903, the defendant, after paying the fees and disbursements of other counsel, was in receipt of $12,711.23 under the judgment. Complainant herein was advised that the money had been so received. Very soon thereafter complainant began an effort to procure a settlement from the defendant. This is amply established, not only by the testimony of complainant and that of

the members of his family, but it finds corroboration in the financial stress under which he was laboring. He was without work, without income, and, advanced in years as he was, was put to the extremity of continually procuring small sums of money from the defendant, with which to meet his needs. This was the defendant's attitude, notwithstanding that, in a letter to Mr. Griffin, of date, March 13, 1903, in which collection of the judgment was urged, the former said:

"Aside from my personal need of the money, Colonel Myers is very anxious to have the matter closed up."

After persistent and unsuccessful effort to obtain some statement from the defendant, the complainant, in October, 1906, ceased all personal relations with the defendant. Colonel Myers subsequently retained counsel to procure an accounting. These counsel made repeated effort to obtain, without litigation, an accounting. They were unsuccessful. The defendant's attitude with these counsel was that he was the absolute owner of the contract interest assigned him by George W. Myers. Upon learning that Radford's testimony, given by deposition before the United States Commissioner in the intervention proceedings, clearly disclaimed ownership of this
280 interest, and that he had then explicitly testified that he held the assignment beneficially for Colonel Myers, these counsel ceased further amicable effort to obtain an accounting, and instituted this suit.

The fact is that, notwithstanding over five year's effort, no account was ever procured by this complainant until this hearing was in progress. A time was finally reached when it could neither be refused nor delayed. A clear legal duty devolved upon defendant to account to complainant when demand was first made, shortly after August 22nd, 1903, the relations of attorney and client in reference to the Luzerne County litigation being then at an end.

Weeks on Attorneys at Law, Paragraph 308.
Mechem on Agency, Paragraph 933.

Upon February 4, 1909, the first account rendered complainant, shows him indebted to defendant in the sum of $2,588.63.

There arise these crucial questions for consideration. What services were performed by the defendant? What is a reasonable compensation to be awarded for them? Upon what sum shall interest, if any, be allowed, and against whom?

No one may read the voluminous correspondence which passed between the defendant and Major Griffin without being driven to the conclusion that the legal questions involved, both in the main case and in the intervention proceedings, were investigated by the latter and not the former; that Mr. Radford relied implicitly and almost exclusively upon Mr. Griffin for investigation of the legal principles in issue, and that the real work of preparing and directing the federal case, both upon the law and the facts, was done by the latter.

One of the defendant's claims was that he investigated the defense of indebtedness beyond the constitutional limitation which was among the possible defenses which the County of Luzerne might

have interposed. His letter of February 18, 1903, which
281 was not offered by him, but which was found and introduced by complainant's counsel, refutes this. In that letter Mr. Radford writes:

"The point of the county's indebtedness is absolutely new to me, and I feel indignant that Mr. Lenahan had not spoken of it before, especially as it does not even now appear that it will be raised by the other side." This was written in reply to Mr. Griffin's letter of February 16, 1903, giving the intimation that such a constitutional bar to recovery might be set up.

My conclusions in the foregoing respects are verified by the correspondence subsequent to the trial as well as that preceding it. Mr. Griffin's letters of April 18, 1903, and of May 4, 1903, are noteworthy. In the former letter minute directions are given as to the method to be followed, and which were followed, on taking the depositions in Detroit; and in the latter, proof is given of investigation made by him.

Assuredly Mr. Radford performed service in bringing the litigation to an end. He was instrumental in procuring action. In addition to the absence from home already mentioned, he was present in Scranton, Pa., in connection with the dispatch of the case upon occasion in the months of December, 1902, and February, April and May, of the year 1903. For five days in this city, and having associated with himself Thomas A. E. Weadock, Esq., of this bar, he was engaged in the taking of depositions in the matter of George W. Myer's intervention.

In weighing the reasonable compensation for Mr. Radford's services in the Luzerne County litigation, his direct interest in the outcome may well be borne in mind. He was interested as the equitable holder of a one-half interest in the claim, as collateral for the payment of Colonel Myers' note. He thus had a personal as well as a professional interest in the matter. He was serving himself as well as his client.

The services attendant upon the dismissal of George W. Myer's
suit upon the chancery side of this court were likewise ren-
282 dered equally for himself, as a party to the suit, and for Colonel Myers. Moreover, these services were neither intricate nor prolonged.

For his entire services in these matters, the action against the County of Luzerne and the proceedings, both federal and state, instituted by George W. Myers, he will be amply compensated by an allowance of $1000.

Certain other services were also performed by him for complainant. A just compensation for them will, in my judgment, be awarded by allowance of the following sums: in the Mississippi matter, so-called, $125; in the Kentucky matter, $250; in the matter of an addition to the Michigan capital, $100; in the Howell matter, $25, and in the matter of contemplated suit against George W. Myers, $50. No question has been made of the allowance of $250 to Mr. Weadock for the services above alluded to. Actual disbursements should also be allowed. The computation should also include

a note of complainant's for $100, of date, December 9, 1899, and running at six per cent.

Defendant seeks to add an interest charge to the allowances for services. A sum due an attorney for professional services will bear interest only after the rendition of a bill. No bill was ever rendered, and the interest charges must therefore be disallowed.

Weeks on Attorneys at Law, Para. 434.

That an immediate settlement was sought by complainant following payment of the judgment, is conclusively proven in my judgment. The first demand made may well be fixed as of date, August 25, 1903, upon which day the defendant advanced complainant $40. Defendant's failure to comply with the demand made him chargeable thenceforward to complainant for interest on the moneys withheld.

Mechen on Agency, Para. 833, and cases cited.

Subsequent payments to complainant were simply payments on account of the moneys due from defendant to Colonel
283-287 Myers, and, carry no interest. The defendant, then, as of August 25, 1903, should have paid the two promissory notes out of the funds then in his hands. No interest upon them is to be allowed after that date. Defendant will be charged with interest from that date on the moneys due complainant. Included in the amount thus due is concededly the share arising out of the George W. Myers' assignment to the defendants, since it is here admitted that the assignment was taken from the son by Radford for the father's benefit.

A decree accordingly may be entered.

____ ____,
Circuit Judge.

* * * * * * *

288 *Final Decree.*

Signed and Filed Aug. 7th, 1909.

(Entitled in Court and Cause.)

At a Session of said Court Held at the Court House in the City of Detroit, in said County, on the Seventh Day of August, A. D. 1909.

Present: The Honorable Alfred J. Murphy, Circuit Judge.

This cause having been heard upon the Bill of Complaint herein and answer of defendant claiming the benefit of the Cross Bill and replication of Elijah E. Myers to such answer; and the proofs orally, documentary and written taken in open Court, and the Court
289 having heard and considered the proofs and arguments of counsel for the respective parties finds:

That on August 25th, 1903, the said Elijah E. Myers was indebted to said George W. Radford in the sum of $8,055.21 on two notes given by said Myers to said Radford and on certain sums of money loaned and paid by said Radford to or for said Myers, which said sum of $8,055.21 includes interest on said notes and sums so loaned as aforesaid to said 25th day of August, 1903.

That on March 17th, 1903, the said George W. Radford, acting as attorney for the said Elijah E. Myers received the sum of $5000.00 for said Myers on a judgment entered in favor of said Myers against the County of Luzerne, State of Pennsylvania.

That on April 2nd, 1903, the said George W. Radford, acting as attorney for the said Elijah E. Myers received the sum of $865.25 for said Myers on said judgment entered in favor of said Myers against the County of Luzerne, State of Pennsylvania.

That on August 22nd 1903, the said George W. Radford acting as attorney for the said Elijah E. Myers, received the sum of $6,846.02 for said Myers on said judgment entered in favor of said Myers against the County of Luzerne, State of Pennsylvania, making a total of $12,711.23 received by said defendant George W. Radford as attorney for said Elijah E. Myers from said County of Luzerne.

That afterwards and on the 25th day of August, 1903, said Myers made demand upon said Radford for an account, but said Radford refused to account for said sum of money so received until the hearing of this case on the 13th day of February, 1909.

That on said 25th day of August, A. D. 1903, there was a balance due and owing said Myers from said Radford in the sum of $4,656.02; that thereafter up to October 31st, 1906, the said
290 Radford paid small amounts on said sum so owing to said Myers, which said sums when credited upon the amount owing to said Myers on August 25th, 1903, left a balance due and owing from said Radford to said Myers on said 31st day of October, 1906, of the sum of $3,375.81 which amount with interest thereon to February 13, 1909, left a balance on said date owing by said Radford to said Myers of the sum of $3,761.56.

That said Radford on said February 13, 1909, rendered to the said Myers an account for services performed by said Radford for said Myers and the court finds that the reasonable allowance for legal services performed by said Radford for and on behalf of said Myers is the sum of $1800.00 leaving a balance due and owing said Myers from said Radford on the 13th day of February, 1909, of $1961.56 which amount with interest thereon to this date amounts to the sum of $2004.80.

Upon hearing William C. Stuart, one of the solicitors for complainant and Samuel P. Bradley, solicitor for the defendant and Thomas A. E. Weadock of counsel for defendant, it is ordered, adjudged and decreed that this court, by virtue of the authority therein vested does order, adjudge and decree that defendant pay to the complainant within ten days of this date, the sum of $2004.80 so found to be due from said defendant to complainant for moneys collected by said defendant as attorney for said Elijah E. Myers, together with lawful interest thereon from this date until paid; also

costs of suit to be taxed by the Clerk of this court and in default of such payment, execution issue therefor.

Dated August 7th, 1909.

(Sgd.) ALFRED J. MURPHY,
Circuit Judge.

(Sgd.) C. K. LATHAM AND
W. C. STUART,
Solicitors for Complainant.

291–292 *Claim of Appeal.*

Filed and Served Aug. 31, 1909.

And now comes the said defendant and cross-complainant, George W. Radford, and claims the benefit of an Appeal to the Supreme Court from the Decree entered in this cause by said Court, upon August 7, 1909.

GEORGE W. RADFORD.

Dated, Detroit, August 31, 1909.

To Louis W. Himes, Register of said Court.
S. P. Bradley, Solicitor for George W. Radford.
Thos. A. E. Weadock, Of Counsel.

* * * * * * *

293 *Opinion.*

In the Supreme Court of the State of Michigan.

MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Complainant,
vs.
GEORGE W. RADFORD, Defendant and Appellant.

Before Ostrander, Birl, McAlvay, Blair and Stone, Justices.

BLAIR, *J.*:

This is a suit for an accounting commenced by Elijah E. Myers in his lifetime and revived in the name of his wife, as executrix, after his death.

The bill alleges that a proper accounting would show an indebtedness from defendant to complainant of several thousand dollars. The defendant answered and claims the benefit of a cross-bill, alleging that such accounting would show that complainant was indebted to defendant in a large amount, and praying a decree therefore.

For many years prior to the year 1906, the complainant, Elijah E. Myers, who in his prime was a national figure as an architect of public buildings, had been a client of the defendant and appellant. On February 22nd, 1895, the complainant entered into a contract with the County of Luzerne, Pennsylvania, for the furnishing of

plans and specifications for a court house. The court house was never built, but Colonel Myers complied with his part of the contract by delivering the plans and specifications, etc. The first two payments of $5,000 each were made. The third payment of $10,000 was refused by the county, and in July, 1895, the matter was placed in the hands of John T. Lenahan, a lawyer at Wilkes-Barre, Pennsylvania, who brought suit in the state circuit court of Luzerne county. Mr. Lenahan was employed by George W. Myers, representing his father, and on January 2nd, 1896, Colonel Myers assigned a one-half interest in the contract to George W. Myers. Mr. Lenahan did practically nothing with the case until 1897, when he made an application for change of venue. This application was yet undecided when, in September, 1899, the complainant consulted the defendant regarding the matter, at which time the services in question here were commenced by defendant. On December 9th, 1899, Colonel Myers and the defendant had a mutual settlement, resulting in Colonel Myers giving the defendant a note, bearing that date, for $4,613.60, payable on demand, with interest at 6 per cent. On that date, as collateral security for the note and an additional loan of $100 made at the time by defendant to Colonel Myers, the latter assigned his interest in the Luzerne County contract to defendant.

On the 2nd day of April, 1900, George W. Myers assigned his interest in the contract to defendant: "the said George W. Radford to account to the said George W. Myers for all amounts received on account of said one-half interest after first deducting therefrom the thousand dollars as attorney fee of said George W. Radford, also one-half of all court costs and disbursements and other legal services incurred and to be incurred in the collection of the moneys due or to become due under said contract."

Complainant gave his written consent to this assignment.

On April 11th, 1900, during the absence of complainant in Mississippi, George W. Myers, in consideration of $150 paid to him by defendant, transferred to defendant "all my interest in and to the foregoing agreement, and in and to the original contract, assigned as in said above agreement specified, and I also hereby guarantee that I am the owner of a one-half interest in said original contract; that I have not otherwise disposed of said contract or my interest therein, and that I have full and complete right to assign the same as herein."

In the fall of 1902, Major Levi T. Griffin, then in the employ of Willard, Warren & Knapp, of Scranton, Pennsylvania, was employed in the case and on January 23rd, 1903, instituted suit in the United States Court, as attorney of record, with his firm and Lenahan as counsel. On February 25th, 1903, verdict was obtained for $14,750. Soon thereafter, George W. Myers intervened in the case, claiming to be the owner of one-half of the judgment, and
294 basing this contention upon the claim that his half interest in the original contract had been procured by the defendant herein fraudulently. An appropriate issue was framed, depositions were taken in Wilkes-Barre and Detroit, and the son was defeated,

in his contention. The latter had also started a suit upon the chancery side of the Wayne Circuit Court against both his father and this defendant, seeking to set aside the assignment he had made to Mr. Radford. With the unsuccessful termination of the son's effort to reach the judgment, the suit in the Wayne Circuit was abandoned and was finally dismissed without hearing. In this latter suit, the defendant herein was solicitor of record for both himself and Colonel Myers.

By August 22nd, 1903, the judgment, which had then grown to $14,918.79, had been paid in full. For services in the main case and in the intervention of George W. Myers, Major Griffin and Messrs. Willard, Warren & Knapp received the sum of $1,500, of which $500 was for services rendered in the latter matter. Mr. Lenahan was given $500 for such services as he had performed. The defendant herein claimed to be entitled to $4,000 for services rendered by him in these two matters, $1,500 of which is claimed for services performed in the two proceedings begun by the son. Upon August 22, 1903, defendant, after paying the fees and disbursements of other counsel, was in receipt of $12,711.34 under the judgment.

From a decree finding a balance due to complainant at the date thereof of $2,004.80, the defendant appeals to this court.

The whole case hinges upon the extent and value of the defendant's services in the collection of the court house claim.

Defendant testified:

"I claim in the most positive manner to have taken complete charge of the case from the time I was employed in it until it was finished."

Prior to the institution of suit in the federal court at Scranton, defendant and, later, Mr. Griffin and his firm devoted their efforts to inducing Mr. Lenahan to bring the case to trial in the state court.

Defendant was well acquainted with Mr. Griffin, who had been for many years an eminent member of the Detroit bar, and wrote to him on November 14th, 1902:

"Now, however, that I feel the matter is in safe hands, I shall be guided entirely by what you advise in this matter."

March 3rd, 1903, he wrote:

"When I placed the matter in your hands, as I did, I knew the man I was trusting, and my trust is of such a character that I am willing to leave it entirely to you."

March 5th, 1903, he writes:

"Had it not been for you, I would now be precisely in the same position, I was two years ago, had I not found someone else to take hold of the matter."

March 9, 1903, he writes:

"I considered, and knew you to be entirely competent to handle the case, without any assistance from anybody whatever, except such as I might possibly be able to give you, and also except such as you, in your judgment, might think you would need from local attorneys, on account of your handicap, by reason of deafness."

Defendant also knew that the firm with which Major Griffin was associated was of high repute and composed of eminent and dis-

tinguished lawyers. The question which might arise would concern the constitution, statutes and court decisions of Pennsylvania, as to which a foreign attorney would naturally defer to the opinions of eminent lawyers of that state.

On March 2nd, 1903, after judgment in the principal case, Mr. Griffin wrote to Radford:

"Write to Lenahan asking him to make out his bill separate. He has nothing to do with this collection. He had the claim for several years but did not collect it. You really took it out of his hands and it was collected by this firm with my aid. Out of deference to Lenahan and the courtesy that exists at the bar and, for that matter, I may say sincerely, with the wish to have him participate in the trial, he was put on the writ together with this firm as of counsel. He performed his part all right and did as good work as anyone, but, as you said and as Judge Willard said, the case tried itself. I could have tried it myself, deaf as I am, with your assistance, or you could have tried it with mine, or this firm could have tried it alone. * * * You have nothing to fear now. You have this firm behind you and, moreover, you have your judgment and need not ask any odds of Mr. Lenahan or anyone else and can give such specific instructions as you see fit."

In a memorandum Mr. Griffin wrote:

"I think it proper for me, Mr. Griffin, to add that I do not at all share in Mr. Lenahan's feelings towards Mr. Radford. It is sufficient answer to say that within 40 days after this firm concluded to take active measures in the matter the judgment was obtained and the amount practically collected. It is a matter of no consequence whose name was used as attorney for plaintiff. Every step that was taken had the approval of some member of this firm."

In his confidential letter of March 25th, 1903, Mr. Griffin enclosed memorandum of conversation with Judge Willard in which the judge said:

"Memorandum made for Judge Willard.

The fact is you have saved Radford's entire claim by going
295 into the United States Court and he (Radford) ought to appreciate it."

At the foot of this memorandum Mr. Griffin writes: "I replied that you did appreciate it and have manifested it."

On July 29, 1903, Mr. Griffin wrote to Radford, after learning that the Geo. W. Myers case would be decided in their favor:

"In view of our success, I take it that the present charge does not come out of your pocket but I wish it to be reasonable as respects Mr. E. E. Myers and satisfactory all round. I am quite willing, therefore, that you should fix it at your own figures and I will endeavor to see that it is carried out accordingly. * * * I occupied in all about three weeks preparing for the oral argument and afterwards preparing the brief. I agree that this seems a long time, but everything is uncertain in the law and I am not willing to leave a point untouched on the presentation of it to the best possible advan-

tage according to my judgment. * * * On the whole, I had thought that a lump sum of $500 would be entirely reasonable for services rendered of this firm, of which I should hope they would contribute $250 to my impoverished financial condition; but, of course, that is a matter wholly for them, as I am not in a position to make any claim as of right."

June 11, 1903, defendant wrote:

"Yours of the 9th instant, also brief received yesterday. At ten minutes past twelve last night I finished reading the brief; you can imagine how much I enjoyed it. The case ought to have been won, by the mere reading of the testimony; if the brief does not cinch it, I shall be the most surprised individual in Detroit."

August 1st, 1903, he writes:

"As to your charge; personally I consider the lump sum of $500 as proposed entirely satisfactory, and heartily consent thereto, on condition you get not less than half of it; you ought to have it all."

On May 19th, 1903, Major Griffin wrote relative to defendant's attendance at the hearing of the Geo. W. Myers case, which had been set for May 26th:

"You must act on your own judgment about coming. Certainly it is not necessary; yet it would be very pleasant for me and the amount involved is so large it certainly is nothing against you, that you should be at least present at all of the proceedings."

In his letter of April 18th, 1903, Mr. Griffin gave Mr. Radford explicit and detailed directions as to the method to be pursued in taking the depositions at Detroit in the Geo. W. Myers case and defendant followed them, as he acknowledged in a letter to Mr. Griffin.

After a careful consideration of the letters between defendant and his attorney, and considering the probabilities of the case, we concur in the opinion of the Circuit Judge that:

"No one may read the voluminous correspondence which passed between the defendant and Major Griffin without being driven to the conclusion that the legal questions involved, both in the main case and in the intervention proceedings, were investigated by the latter and not the former; that Mr. Radford relied implicitly and almost exclusively upon Mr. Griffin for investigation of the legal principles in issue, and that the real work of preparing and directing the federal case, both upon the law and the facts, was done by the latter."

And also concur in his conclusions that:

"For his entire services in these matters, the action against the County of Luzerne and the proceedings, both federal and state, instituted by George W. Myers, he will be amply compensated by an allowance of $1,000."

It is urged, however, that the Circuit Judge failed to consider the effect to be given to the assignment of April 2nd, fixing a fee of $1,000 for collecting a one-half interest, and failed to attach sufficient importance to the decision of the federal judge in the intervention proceedings.

The assignment of April 2nd was merged in the assignment of April 11th and its persuasive force is not sufficient to affect the result.

It is said that Judge Archbald's decision is a final adjudication in the federal court that defendant was the absolute owner of one-half of the judgment, and, therefore, since defendant was merely making a present to complainant he had a right to fix his compensation for his services. In the course of his opinion Judge Archbald said:

"Col. Myers explained to Mr. Radford that one-half interest had already been assigned to George, and it was recognized that if he held onto the assignment, there would be little, if anything, coming to Col. Myers after he had settled with Radford. But it was stated by Col. Myers that the assignment was without consideration, and if he succeeded, as he hoped, in getting George to surrender it, then Radford was to account to him for that interest also, after deducting for expenses and services. The trust relation so established still continues."

On March 16th, 1903, defendant wrote to Major Griffin:

"The Colonel advises me, there was absolutely no consideration whatever for this assignment, and that the only reason for his doing it, was because of the boy's importunities and who had also succeeded in enlisting his mother to persuade the Colonel in his behalf, upon promises that he would turn over an entirely new leaf, lead a different life and help his father, which promises he failed to keep. * * * The Colonel's indebtedness to me, far exceeds one-half of the judgment, and I intend to pay him any surplus, which may be left, above the expenses of the suit, my expenses and services and his indebtedness, for the reason that I regard the assignment, from Col. Myers to his son without consideration; and the boy never had any actual interest, and that when he assigned to me I took it for the benefit of the Colonel."

March 27th, 1903, he writes:

"George W. Myers knew then, and knows now, that I took
296 the absolute assignment on the basis of the claim of the Colonel, that Geo. W. Myers had no actual interest in the contract, and that whatever I realized, over and above the debt of the Colonel, and services and the expenses of the litigation, should go to the Colonel; and as the debt of the Colonel to me far exceeds one-half of the judgment, you can readily see that it is the Colonel's battle I am fighting, and not my own, except the protection I am entitled to, for the expense of the litigation, and my own services."

We deem it to be clear that Judge Archbald did not intend to determine, and did not in fact determine, that the trust relations between defendant and Colonel Myers no longer existed.

We further concur with the Circuit Judge in the opinion that complainant demanded an accounting and that defendant furnished no statement or bill of his services until upon the hearing and, therefore, was not entitled to interest thereon.

For a further discussion of the questions involved, we refer to the

elaborate and convincing opinion of the Circuit Judge. Indeed, we might well have adopted that opinion without further comment.

The decree is affirmed.

CHARLES A. BLAIR.
RUSSELL C. OSTRANDER.
JOHN E. BIRD.
AARON V. McALVAY.
JOHN A. STONE.

Endorsed: Filed, October 2, 1911. Charles C. Hopkins, Clerk.

297 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the Second Day of October, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

Present: The Honorable Russell C. Ostrander, Chief Justice.
John E. Bird,
Frank A. Hooker,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

No. 24246.

MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Complainant,
vs.
GEORGE W. RADFORD, Defendant and Appellant.

This cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the County of Wayne, in Chancery be and the same is hereby in all things affirmed. And it is further ordered, adjudged and decreed that the complainant do recover of and from the defendant her costs, to be taxed.

298 To the Honorable William R. Day, and to the other Justices of the Supreme Court of the United States:

Your petitioner, George W. Radford, respectfully shows:

1. That he is a citizen of the State of Michigan, residing at the City of Detroit therein.

2. That on October 25, 1907, Elijah E. Myers, of said City of Detroit, filed a bill in chancery against your petitioner, in the Circuit Court for the County of Wayne and State of Michigan; that

on December 14, 1909, your petitioner filed his answer and cross-bill to said bill of complaint, in which answer and cross-bill your petitioner clearly and distinctly pleaded a decision and decree of the Circuit Court of the United States for the Middle District of Pennsylvania, rendered July 23, 1903, in bar and res judicata of the principal part of the subject matter in controversy alleged in said bill of complaint; that on June 30, 1909, the complainant, Elijah E. Myers, having died, the case was revived in the name of Mary D. Myers as executrix of complainant's estate; that on August 7, 1909, a final decree was entered in said court for $2004.80 against your petitioner.

3. That your petitioner appealed from said decree to the Supreme Court of the State of Michigan; that said Supreme Court of the State of Michigan affirmed said decree of said Circuit Court for the County of Wayne, by opinion of said Supreme Court, filed October 2, 1911, reported in volume 18 of the Detroit Legal News at page 611, under the title "Myers, Executrix, v. Radford", to which opinion reference is hereby made as part hereof.

4. Your petitioner avers that the Supreme Court of the State of Michigan, in rendering said decree affirming the decree of said Circuit Court for the County of Wayne, denied full faith and credit to the decree and opinion in the case of Elijah E. Myers v. County of Luzerne, sur petition of George W. Radford to take money
299 out of court, rendered by Hon. Robert W. Archbald, District Judge, in the Circuit Court of the United States for the Middle District of Pennsylvania, at the February term, 1903, relating to the same subject matter which comprised the principal part of the subject matter in controversy in Myers, Executrix, v. Radford, aforesaid; which said opinion in Myers v. County of Luzerne, is reported in 124 Fed. Rep., p. 436, to which reference is also hereby made as a part of this petition.

5. Your petitioner further avers that by denial of full faith and credit to said opinion and decree of the Circuit Court of the United States for the Middle District of Pennsylvania, the Supreme Court of the State of Michigan decided against the validity of the title and right of your petitioner, claimed under an authority exercised under the United States, as provided by Section 709 of the Revised Statutes of the United States, founded on the provisions of the Constitution of the United States, which declare the extent of the judicial power of the United States; and because thereof, a federal question is involved, and this Honorable Court has jurisdiction to review the said decree of the Supreme Court of the State of Michigan on writ of error.

6. That hereto attached, and made a part of this petition, is your petitioner's assignment of errors to the said proceedings of the Supreme Court of the State of Michigan. Also, that submitted herewith, is a certified copy of the record upon which said cause was heard in the Supreme Court of Michigan.

7. That on February 29, 1912, your petitioner presented to the Chief Justice of the Supreme Court of Michigan a written petition for a writ of error from the decision and decree of the Supreme Court of Michigan to the Supreme Court of the United States, based upon the same assignment of errors hereto attached, which petition

has been duly denied; and because of such denial this petition is now presented.

Wherefore your petitioner prays that a writ of error may be issued out of and under the seal of the Supreme Court of the United States, directed to the Supreme Court of the State of Michi-
300 gan, commanding said court to certify and send to this court a full and complete transcript of the record and proceedings of the Supreme Court of the State of Michigan in the case therein entitled "Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, complainant, cross-defendant and appellee, v. George W. Radford, defendant, cross-complainant and appellant, No. 24246," to the end that the said case may be reviewed and determined in this court, as provided by law, and that the decree of the said Supreme Court of the State of Michigan in said case may be reversed by this court; and so your petitioner will ever pray.

GEORGE W. RADFORD, *Petitioner.*

THOMAS A. E. WEADOCK,
Attorney for Petitioner.

Business address: 811 Hammond Building, Detroit, Mich.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 14th day of March, 1912, before me, personally appeared George W. Radford, the petitioner aforesaid, and made oath that he had read the said petition by him subscribed, and knew the contents thereof, that the same are true, of his own knowledge and belief.

GEORGE W. RADFORD.

Subscribed and sworn to before me this 14th day of March, 1912.

GEORGE C. CAPEN,
Notary Public, Wayne County, Michigan.

My commission expires Dec. 7, 1912.

Let the writ of error issue, as above prayed, upon the execution of a bond by George W. Radford to Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, in the sum of five hundred dollars; such bond, when approved, to act as security for costs.

Dated, March 18, 1912.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

301 Supreme Court of the United States.

GEORGE W. RADFORD, Plaintiff in Error,
v.
MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Defendant in Error.

Assignment of Errors.

Now comes George W. Radford, the above plaintiff in error, and files herewith his petition for a writ of error, and says that there are errors in the records and proceedings of the Supreme Court of Michigan in a certain cause determined therein October 2, 1911, entitled as follows: "Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, complainant, cross-defendant and appellee, v. George W. Radford, defendant, cross-complainant and appellant," and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment of errors:

The Supreme Court of Michigan erred in holding and deciding against the validity of the title and right of petitioner, George W. Radford, the defendant, cross-complainant and appellant therein, claimed by him under an authority exercised under the United States, pursuant to Section 709 of the Revised Statutes of the United States, by denying full faith and credit to the decision, order and judgment of the Circuit Court of the United States for the Middle District of Pennsylvania at the February term, 1903, on the 31st day of July, 1903, in the case of Elijah E. Myers v. County of Luzerne, sur petition of George W. Radford to take money out of court, reported in volume 124 of the Federal Reporter at page 436, in which proceeding and cause, Elijah E. Myers, (the complainant who filed the bill in the aforesaid cause determined in the Supreme Court of Michigan), was a party and a witness in favor
302 of said George W. Radford, and by which decision, order and judgment, it was determined that said George W. Radford was the absolute owner in his own right of a one-half interest in the contract between the County of Luzerne and said Elijah E. Myers, upon which judgment was rendered in said Circuit Court of the United States for the Middle District of Pennsylvania, said one-half interest in said contract having been duly assigned by said Elijah E. Myers to George W. Myers, and by said George W. Myers assigned to said George W. Radford with the written assent of Elijah E. Myers thereto; and the said one-half of the aforesaid judgment thereon having been paid into court, the same was duly awarded and paid to said George W. Radford pursuant to the aforesaid order and judgment of the Circuit Court of the United States for the Middle District of Pennsylvania; and which fund, so paid, constituted the principal part of the subject matter in controversy in the aforesaid entitled cause determined in the Supreme Court of Michigan; and which title and right of said George W. Radford thereto were clearly pleaded in his answer and cross-bill in the aforesaid

cause determined in the Supreme Court of Michigan, and distinctly claimed by him throughout the trial of said cause in the Circuit Court for the County of Wayne, In Chancery, and, on appeal from the decree thereof, in the Supreme Court of Michigan.

The said errors are more particularly set forth as follows:

The Supreme Court of Michigan erred in holding and deciding contrary to the said decision, order and judgment of the Circuit Court of the United States for the Middle District of Pennsylvania, as aforesaid—

First. That the paper writings, Exhibits 2, 3 and 4 on pages 222-225 inclusive of the record in the aforesaid cause in the Supreme Court of Michigan, being respectively—assignment from Elijah E. Myers to George W. Myers, contract between George W. Myers, George W. Radford and Elijah E. Myers, and assignment from George W. Myers to George W. Radford, all of which were in controversy and adjudicated upon by the Circuit Court of the United States for the Middle District of Pennsylvania, did not vest in
303 said George W. Radford absolute title to all or any part of the judgment recovered in said cause of Elijah E. Myers v. County of Luzerne.

Second. That the contract, Exhibit 3, dated April 2, 1900, aforesaid, between George W. Myers, George W. Radford and Elijah E. Myers, was merged in the assignment of April 11, 1900, Exhibit 4, by George W. Myers to George W. Radford.

Third. That the decision, order and judgment of the Circuit Court of the United States for the Middle District of Pennsylvania did not finally determine the rights between George W. Radford and Elijah E. Myers, to all or any part of the one-half of the said judgment recovered in said cause of Elijah E. Myers v. County of Luzerne.

Fourth. That notwithstanding the said decision, order and judgment of the Circuit Court of the United States for the Middle District of Pennsylvania, the Supreme Court of Michigan required said George W. Radford to account for the whole of said fund so awarded and paid to him pursuant to said decision, order and judgment of the Circuit Court of the United States for the Middle District of Pennsylvania.

For which errors, George W. Radford, the plaintiff in error, prays that the said decision and decree of affirmance by the Supreme Court of the State of Michigan, rendered October 2, 1911, be reversed and judgment rendered in favor of the plaintiff in error herein, and for costs.

THOMAS A. E. WEADOCK,
Attorney for Plaintiff in Error.

304 [Endorsed:] United States of America. Supreme Court of the United States. George W. Radford, Plaintiff in Error, v. Mary D. Myers, Executrix of the Estate of Elijah E. Myers, Defendant in Error. Petition for writ of error to the Supreme Court of Michigan. Assignment of errors. Thomas A. E. Weadock, Attorney for Plaintiff in Error, 810-811 Hammond Building, Detroit, Michigan.

305 UNITED STATES OF AMERICA, *ss:*

To Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Michigan, wherein George W. Radford is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, this 25th day of March, in the year of our Lord one thousand nine hundred and twelve.

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

306 EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

I hereby certify and return that on the Twenty-eighth day of March A. D. 1912, I served the within Writ on Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, within named at Detroit in said District, by delivering to her personally, a true copy thereof.

MILO D. CAMPBELL,
U. S. Marshal,
By JOHN V. TROLLOPE, *Deputy.*

Service	$2.00
Travel 1 mi.....	.12
	2.12

The above fees paid by Plaintiff in error.

3/28/12. 11.45 A. M.
H. O. T.

307 Copy.

Power of Attorney.

Know all Men by these Presents: That, Massachusetts Bonding and Insurance Company, a body corporate, duly incorporated under the laws of the Commonwealth of Massachusetts, and having its principal office in Boston, Mass., doth hereby constitute and appoint Charles L. Raymond and Harry Hanford, of the City of

Detroit, County of Wayne and State of Michigan to be its true and lawful Attorneys in the State of Michigan for the following purposes, to wit:

That the said Charles L. Raymond and Harry Hanford, or either of them, be and they are hereby fully authorized and empowered as Attorneys-in-Fact, to execute, acknowledge, justify upon and deliver any and all Bonds or Undertakings given before any Probate or Orphans' Court, or required in any Judicial action or proceeding, brought or pending in the United States Courts, or any Courts having jurisdiction within the aforesaid State.

It being the intention of this Power of Attorney to fully authorize and empower the said Attorneys in Fact, to sign the name of said Company, and affix its corporate seal, as Surety, to any and all of said Bonds, and thereby to lawfully bind it as fully, to all intents and purposes, as if done by the duly authorized officers of said Company, with the seal of the said Company thereto affixed, and the said Company hereby ratifies and confirms all and whatsoever the said Attorneys in Fact may lawfully do in the premises by virtue of these presents.

Provided, however, that this Power of Attorney does not authorize, or empower, the said Attorneys in Fact to give consent to any alterations, or changes, in terms, conditions or covenants of said Bonds when once executed, nor to any alterations, or changes, in the form or conditions of any Contract, on which this Company is Surety, nor to bind, or in any way commit, the said Massachusetts Bonding and Insurance Company to any course or position whatever regarding adjustment of claims or complaints that may be made thereunder, or in connection with any Bond which may be executed by said Company.

The Massachusetts Bonding and Insurance Company doth hereby constitute and appoint R. C. De Normandie to be its Attorney for it, and in its name, and as, and for its Corporate act and deed, to acknowledge this Power of Attorney before any person having authority by the Commonwealth of Massachusetts to take such acknowledgment to the intent that the same may be duly recorded or filed.

In witness whereof, the said Massachusetts Bonding and Insurance Company, pursuant to a Resolution of its Board of Directors, duly passed on the 20th day of November, A. D. 1907, (a certified copy of which appears on the reverse side hereof), has caused these presents to be sealed with its common and corporate seal, duly attested by its Vice President and its Ass't Secretary, this 16th day of June, A. D. 1911.

MASSACHUSETTS BONDING AND INSURANCE COMPANY.
SHUMALT PERRY, *Vice-President.*

[Seal Massachusetts Bonding and Insurance Company. Incorporated 1907. Massachusetts.]

Attest:

R. C. De NORMANDIE,
Ass't Secretary.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

I hereby certify that on this 16th day of June, A. D. 1911, before me, the subscriber, a Notary Public for the Commonwealth of Massachusetts, residing in the City of Boston, in said County, personally appeared R. C. De Normandie, the Attorney named in the foregoing Power of Attorney, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Power of Attorney to be the act of the said Massachusetts Bonding and Insurance Company.

Witness my hand and Notarial Seal the day and year aforesaid.

[NOTARIAL SEAL.] W. W. BERRY,
Notary Public.

My commission expires February 19, 1915.

308 Be it remembered that, At a meeting of the Board of Directors of Massachusetts Bonding and Insurance Company, duly called and held on the 20th day of November, 1907, a quorum being present, the following Resolution was passed:

Resolved, that the President be, and he is hereby authorized and empowered to appoint one or more persons in the States of the Union, under an appointment sealed with the seal of the Company, attested by the President or one of the Vice-Presidents, and the Secretary or one of the Assistant Secretaries, to act as General Agent, or Agent, or Attorney for the Company in the Territory for which they are appointed, and the President shall have full power to delegate to the said General Agent, or Agents, or Attorneys, the power and rights necessary for them to possess in representing the said Company, and shall also have power to authorize said agents to sign, seal and deliver on behalf of the Company any and all bonds, recognizances, obligations, stipulations, undertakings, or anything in the nature of either of the same, allowed or required by law, municipal or otherwise, or by the rules, regulations, orders, customs, practice, or discretion of any board, body, organization, office or officers, legal, municipal or otherwise, and shall also have power to authorize said agents for or on behalf of the Company to issue, execute and deliver all policies or contracts insuring against loss, or damage by Burglary, Theft or Housebreaking.

Resolved, further, that the President, or either of the Vice-Presidents, in conjunction with the Secretary or Assistant Secretary of this Company, are hereby authorized and empowered to make, execute and deliver on behalf of this Company, and in its name and under its seal, any power or powers of attorney that may be required to carry out the purposes and objects of the foregoing resolutions.

I R. C. De Normandie, Ass't Secretary of Massachusetts Bonding and Insurance Company, do hereby certify that the above and foregoing is a full and correct copy of a resolution passed by the Board of Directors, of the said Company, at a regular meeting thereof, duly called and held on the 20th day of November, 1907, a quorum being present, as the same appears on the records of the Company now in my possession and custody as Assistant Secretary.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Company at the City of Boston, this 16th day of June, A. D. 1911.

[Seal Massachusetts Bonding and Insurance Company. Incorporated 1907. Massachusetts.]

R. C. DE NORMANDIE, *Secretary.*

309 Copy.

Know all Men by these Presents, That we, George W. Radford of the City of Detroit and State of Michigan, as principal, and Massachusetts Bonding and Insurance Company, a corporation organized and existing under the laws of the State of Massachusetts, and authorized to do business in the State of Michigan, as sureties, are held and firmly bound unto Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, of the City of Detroit and State of Michigan, in the full and just sum of five hundred dollars, to be paid to the said Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, or to her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eighteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a session of the Supreme Court of the State of Michigan in a suit pending in said Court, between Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, complainant, cross-defendant and appellee, v. George W. Radford, defendant, cross-complainant and appellant, No. 24246 a final decree was rendered against the said George W. Radford and the said George W. Radford having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the final decree in the aforesaid suit, and a citation directed to the said Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said George W. Radford shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE W. RADFORD. [SEAL.]
MASSACHUSETTS BONDING & INSURANCE CO., [SEAL.]
By HARRY HANFORD, [SEAL.]
Attorney-in-Fact.

Sealed and delivered in presence of—

LON V. LEECH.
THOMAS M. COTTER.

Approved by—

WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Filed March 29, 1912. Chas. C. Hopkins, Clerk.

310 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some or you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George W. Radford, appellant, and Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
311 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant, George W. Radford, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the

United States, the 25th day of March, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

312 To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto attached.

Dated April 25, 1912.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

313 In the Supreme Court of the State of Michigan.

No. 24246.

MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Complainant, Cross-Defendant and Appellee, Defendant in Error,

vs.

GEORGE W. RADFORD, Defendant, Cross-Complainant and Appellant, Plaintiff in Error.

In the Supreme Court, *ss:*

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record, and of all proceedings had and determined in the above entitled cause, by said Supreme Court, including the written decision and reasons therefor, signed by the Judges of said Court, and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof; that attached thereto are the petition for Writ of Error, together with the assignment of errors in the Supreme Court of the United States; the Writ of Error, the allowance thereof by William R. Day, Associate Justice of the Supreme Court of the United States, endorsed thereon; the citation duly issued, and signed by William R. Day, Associate Justice of the Supreme Court of the United States, with due proof of personal service of a true copy thereof upon the adverse party, made by the United States Marshal of the Eastern District of Michigan, and a true copy of the bond, duly approved by William R. Day, Associate Justice of the Supreme Court of the United States.

In testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court at the City of Lansing this 25th day of April in the year of our Lord, one thousand nine hundred and twelve.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

314 UNITED STATES OF AMERICA, *ss:*

Supreme Court of the United States, October Term, 1911.

No. 1116.

GEORGE W. RADFORD, Plaintiff in Error,
v.
MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Defendant in Error.

To the Honorable James H. McKenney, Clerk of said Court:

The following is a statement of the errors on which the plaintiff in error in the above entitled cause intends to rely, and of the parts of the record which the plaintiff in error thinks necessary for the consideration thereof.

Assignment of Errors.

The plaintiff in error will rely upon all of the errors assigned, and as set forth in the assignment of errors heretofore filed in said cause.

Parts of the Record.

The plaintiff in error submits below a statement of the parts of the record now on file in said cause, which he thinks necessary for the consideration of the said assignments of error.

The following pages of the printed record of said cause, upon which the same was heard in the Supreme Court of the State of Michigan:

Title;
Pages 1-14, both inclusive;
Page 15—first 3 lines;
" 17—last 15 lines, commencing with the words "Mr. Stewart", to the bottom of the page;
" 18—first 5 lines;
" 19—line 19 only;
Page 20—the paragraph commencing with the words "Mr. Radford", line 18, through the words "Mr. Harsha", line 27, omitting the rest of the paragraph;
" 23—beginning with line 12, to the bottom of the page;
" 24—all of this page;

" 25—all of the page except the last 2 lines;
" 26—commencing with the word "Court", in line 2, to and including line 15, ending with the word "Exception";
" 50—the entire paragraph, beginning with the words "Mr. Weadock" in line 7, through line 21;
" 75—first 2 lines;
" 95—lines 17 to 25, both inclusive; also the last 4 lines;
" 96—first 11 lines;
" 97—commencing with the word "After" in the fourth line from the bottom of the page, to the bottom of the page;
" 98—first 3 lines and first 3 words of the fourth line;
Pages 221-225—Exhibits 1 to 4, both inclusive;
" 233-234—Exhibit 262;
" 246-253—Exhibit 283;
" 254-267—Exhibit 284;
Page 274- —Certificate of transcript on appeal, commencing with the words "At the request of counsel", to the bottom of the page;
" 275- —paragraph headed "Revivor";
Pages 275-283—Opinion of the Circuit Court for the County of Wayne, State of Michigan;
" 288-290—Final decree of the Circuit Court for the County of Wayne, State of Michigan;
Page 291- —Claim of appeal to the Supreme Court of the State of Michigan;
The opinion of the Supreme Court of the State of Michigan;
The decree of the Supreme Court of the State of Michigan.

THOMAS A. E. WEADOCK,
Attorney for Plaintiff in Error.

Business address: 811 Hammond Building, Detroit, Michigan.

315 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, October Term, 1911.

No. 1116.

GEORGE W. RADFORD, Plaintiff in Error,
v.
MARY D. MYERS, Executrix of the Estate of Elijah E. Myers, Deceased, Defendant in Error.

STATE OF MICHIGAN,
County of Wayne, ss:

Frederick L. Hoffman, of Detroit, Michigan, being duly sworn, deposes and says, that on the 27th day of June, 1912, he served true

copy of the foregoing statement of the errors upon which the plaintiff in error in the above entitled cause intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, on Mary D. Myers, Executrix of the Estate of Elijah E. Myers, deceased, the defendant in error in the above entitled cause, by leaving said copy at the residence of said Mary D. Myers, at No. 732 Second Avenue, Detroit, Michigan, with Charles V. Winn, who resides at said address, and was in charge of said premises, and who stated that said Mary D. Myers was absent from the city.

Further deponent says not.

FREDERICK L. HOFFMAN.

Subscribed and sworn to before me this 27th day of June, A. D. 1912.

[Seal Geo. C. Capen, Notary Public, Wayne County, Mich.]

GEO. C. CAPEN,
Notary Public, Wayne County, Mich.

My commission expires Dec. 7, 1912.

316 [Endorsed:] 637/23,192. No. 1116. United States of America. Supreme Court of the United States. George W. Radford, Plaintiff in error, vs. Mary D. Myers, Executrix of the estate of Elijah E. Myers, deceased, Defendant in error. Assignment of errors upon which plaintiff in error will rely, and notice of portions of record considered necessary to be printed. Thomas A. E. Weadock, Attorney for Plaintiff in Error, 810-811 Hammond Building, Detroit, Michigan.

317 [Endorsed:] File No. 23,192. Supreme Court U. S. October Term, 1912. Term No. 637. George W. Radford, Pl'ff in Error, v. Mary D. Myers, Executrix, etc. Statement of errors to be relied on and designation by plaintiff in error of parts of record to be printed, and proof of service of same. Filed July 3, 1912.

Endorsed on cover: File No. 23,192. Michigan Supreme Court. Term No. 637. George W. Radford, plaintiff in error, vs. Mary D. Myers, executrix of the estate of Elijah E. Myers, deceased. Filed April 29th, 1912. File No. 23,192.

INDEX

CASES CITED.

Supreme Court of the United States

October Term, 1913.

No 251.

GEORGE W. RADFORD,
Plaintiff in Error,
vs.
MARY D. MYERS, *Executrix of the Estate of* ELIJAH E. MYERS, *Deceased,*
Defendant in Error.

In Error to the Supreme Court of Michigan.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

This case comes to this court on writ of error, allowed by Mr. Justice Day, and issued out of this court March 25, 1912, to the Supreme Court of the State of Michigan, to review its opinion (Record, pp. 38-44; reported 167 Mich., 135) and final decree, filed and entered October 2, 1911, in the case of Mary D. Myers, executrix of the Estate of Elijah E. Myers, deceased, complainant, cross-defendant and appellee vs. George W. Radford, defendant, cross-complainant and appellant, being an appeal from the decree (pp. 36-38) of the Circuit Court for the County of Wayne, in Chancery, entered August 7, 1909, in said cause, which was begun on October 25, 1907, by bill of complaint filed by Elijah E. Myers, who died pendente lite.

The federal question is whether due effect was given by this decision of the Supreme Court of Michigan to the prior

decision of the Circuit Court of the United States for the Middle District of Pennsylvania, consisting of an opinion (pp. 18-23; reported 124 Fed., 436) filed July 29, 1903, and a decretal order (p. 17) entered July 31, 1903, in the case of Elijah E. Myers vs. County of Luzerne, sur petition of George W. Radford to take money out of court.

Whether a state court has given due effect to the decision of a United States court is a federal question.

Dupasseur vs. Rochereau, 21 *Wall.*, 130; 22 *L. Ed.*, 588.

Embry vs. Palmer, 107 *U. S.*, 3; 27 *L. Ed.*, 346.

Pendleton vs. Russell, 144 *U. S.*, 640; 36 *L. Ed.*, 574.

Central National Bank vs. Stevens, 169 *U. S.*, 432; 42 *L. Ed.*, 807.

Hancock National Bank vs. Farnum, 176 *U. S.*, 640; 44 *L. Ed.*, 619.

Werlein vs. New Orleans, 177 *U. S.*, 390; 44 *L. Ed.*, 817.

National Foundry & Pipe Works vs. Oconto City W. Supply Co., 183 *U. S.*, 216; 46 *L. Ed.*, 157.

This federal question was raised in the pleadings and insisted upon throughout the proceedings in the lower courts. The bill of complaint (pp. 1-4) filed in the Circuit Court for the County of Wayne, Michigan, by Col. Elijah E. Myers, as complainant, against the plaintiff in error here, as defendant, alleged in so far as relevant to this question: that on February 22, 1895, the complainant made a contract with Luzerne County, Pennsylvania; that on January 2, 1896, the complainant assigned a one-half interest in said contract, upon which he then had a right of action, to George W. Myers, his son; that on December 9, 1899, the complainant assigned to the defendant the other one-half interest in said contract as collateral security to a loan; that on April 11, 1900, the defendant purchased from the son for and in behalf of the complainant the one-half interest in said contract which the latter had previously assigned to his son (par. 5); that it was agreed between the complainant and the defend-

ant at the time of said purchase that the latter should account to the former for all moneys recovered upon said contract (par. 6); that on February 25, 1903, a verdict for over $14,000 was recovered on said contract in the Circuit Court of the United States for the Middle District of Pennsylvania by the complainant against the County of Luzerne, and was paid by the County of Luzerne to the defendant; and the bill prayed that the defendant should account to the complainant therefor.

The defendant filed an answer and cross-bill (pp. 4-8). The answer admitted that the complainant assigned his one-half interest in the Luzerne County contract to the defendant as collateral security; but denied that the defendant purchased the George W. Myers one-half interest in said contract for the complainant or pursuant to any agreement with the complainant, and alleged the facts regarding said purchase to be as follows (par. 5, pp. 5, 6):

> "that on, to-wit: April 2nd, 1900, said George W. Myers and this defendant entered into a written agreement for the prosecution of said suit, and the collection of moneys due on said contract, providing for the payment of the expenses thereof, and, after first deducting an attorney's fee therein and thereby agreed to be paid to this defendant, and also one-half of all court costs and disbursements and other legal services incurred and to be incurred in said suit or other suits, to account to said George W. Myers for all of his one-half in excess thereof; that the said complainant was present and consented to the said agreement, and the defendant avers that the said consent was intended to and did operate as a reaffirmation of the said complainant's prior assignment of January 2nd, 1896, of said one-half interest to George W. Myers. And the defendant further avers that, thereafter, on, to-wit: April 11th, 1900, the said George W. Myers, for a good and valuable consideration to him paid by this defendant, absolutely sold and assigned all his right, title and interest in and to the above mentioned agreement of April 2nd, 1900, between himself and defendant, and in his one-half interest in and to said contract, and that thereby this defendant became the absolute owner thereof. But this defendant says

that, notwithstanding that he so became the absolute owner of said half interest, he purchased the same with the distinct intention on his part that, in case of success in collecting the claim, whatever remained after payment of expenses, services and all of complainant's indebtedness to defendant, should be applied for the benefit of complainant. It was not, however, the intention of this defendant thereby to waive any of his rights as such absolute owner, nor did he intend to allow said complainant to in any way dictate what such expenses should be or in any way fix or determine the value of this defendant's services, and complainant's indebtedness to him, or guess at the same in any such manner as set forth in his said bill."

And paragraph 8 of said answer (pp. 6-7) distinctly pleaded the question to be determined on this writ of error—it alleged:

"that one-half of the amount of said judgment was, by the said County of Luzerne, paid over to Messrs. Willard, Warren and Knapp, who were the local attorneys acting for and on behalf of this defendant at Scranton, Pennsylvania; that said Willard, Warren and Knapp accounted therefor to this defendant, and that said complainant was present, knew of this at the time and made no claim to any part thereof; that the remaining half of said amount of said judgment was, by leave of court, paid into said court by said county in satisfaction of said judgment because of a false claim thereto set up by said George W. Myers, who attempted to repudiate his aforesaid agreement and sale to this defendant. That this defendant thereafter, with full knowledge thereof by complainant herein, filed his petition in said court and cause, asserting his title thereto, and asking leave to withdraw said fund from court; that said George W. Myers appeared and contested the defendant's title and application; upon the issue thus framed, a large amount of testimony was taken and many witnesses were sworn in behalf of this defendant, including the complainant herein, and after full and complete hearing it was adjudged and decreed by the Court in said cause, by opinion rendered July 29, 1903, that this defendant was the absolute owner of said one-half of said claim and of the entire fund so paid into court, which was paid over to this defendant, less costs and charges of said Willard, War-

ren & Knapp, some time thereafter, with full knowledge thereof by complainant, without his making any claim to any part thereof; and this defendant avers that by said decision the title of this defendant to said fund became and is res judicata as to the complainant in this cause as well as to George W. Myers."

The case was heard upon these pleadings and proofs in the Circuit Court for the County of Wayne by Judge Alfred J. Murphy. Before any testimony was introduced, the Federal Decision was called to the attention of the trial judge; and all the original documents and the original transcript of the testimony, taken entirely by depositions before Commissioner Harsha at Detroit, including the testimony of Col. Myers, his daughter, Florence Myers, and his wife, Mary D. Myers (who as executrix is the defendant in error here), and all the other witnesses, comprising the entire record passed upon by the federal court, were produced and used by counsel in the taking of testimony in the case (pp. 9 to 17). The facts proved in the courts below relevant to the federal question were all before the federal judge when he rendered his decision, and were taken bodily from the record before him, and from his opinion, in which they are set out so clearly and fully as to make any recital of them a repetition. There was no proof of any new, relevant facts transpiring since that decision was rendered; and no proof whatever was offered in support of complainant's allegation that defendant made the purchase pursuant to any agreement.

On opening of court on the second day of the hearing, the trial judge made the following announcement of his construction of the Federal Decision:

> "I read the decision in the case of Myers vs. Luzerne County last night. That seems to me to determine that the assignment from the complainant here to his son was a valid assignment, and it seems likewise to determine that the assignment from Geo. W. Myers to the defendant was a valid assignment; however, it seems to me that the question is open here for proof

> and decision that the claim made by the complainant that the assignment from Geo. W. Myers to the defendant was in pursuance of some agreement, and that the assignment was taken beneficially for the complainant. That is open here. I do not think that can be said to have been litigated, or necessarily concluded by the decision in the Federal Court" (pp. 12-13).

The complainant died shortly before the case was determined, it being later revived in the name of Mary D. Myers, the executrix of his estate and the defendant in error here; and shortly after his death the trial judge rendered his decision. Although the Supreme Court of Michigan adopts his opinion (bottom p. 43 and top p. 44), the only parts of his opinion that are relevant here—because this case has nothing to do with the question of the value of Mr. Radford's services apart from the contracts therefor and the Federal Decision thereon—are as follows:

> "The defendant's attitude with these counsel" (representing Col. Myers in the court below) "was that he was the absolute owner of the contract interest assigned him by George W. Myers. Upon learning that Radford's testimony, given by deposition before the United States Commissioner in the intervention proceedings, clearly disclaimed ownership of that interest, and that he then explicitly testified that he held the assignment beneficially for Col. Myers, these counsel ceased further amicable efforts to obtain an accounting, and instituted this suit" (p. 34).
>
> * * * * * *
>
> "Included in the amount thus due is concededly the share arising out of the George W. Myers assignment to defendant, since it is here admitted that the assignment was taken from the son by Radford for the father's benefit.
>
> A decree accordingly may be entered" (p. 36).

The trial judge did not mention the assignment contract of April 2, 1900, which provides for a $1,000 fee out of the George W. Myers half; and, though he stated during the hearing that the Federal Decision established the validity of the contract and assignments (pp. 12-13), he entirely ignored

them and that decision, either as establishing the contract value of the defendant's services as to the George W. Myers half at $1,000 or the ownership of that half as being in the defendant, and apparently reached the conclusion that the assignment of April 11, 1900,—without any proof whatever to sustain the allegations of the complainant's bill relating thereto,—was taken as a matter of law beneficially for the complainant and cancelled the defendant's right to the $1,000 fee under his contract with George W. Myers, and left the matter open to fix the value of the defendant's services wholly contrary to the contracts and the decision of the federal court thereon.

The decree compelled the defendant to account for all of the George W. Myers half interest in the judgment, including the $1,000 fee reserved to the defendant in the contract of April 2, 1900; and fixed the value of the defendant's entire services in the main suit against Luzerne County, the intervention proceedings and the proceedings in the Wayne Circuit Court brought by George W. Myers at $1,000, and found him indebted to the complainant in the sum of $2,004.80.

The defendant appealed to the Supreme Court of the State of Michigan, which affirmed the decree of the Circuit Court for the County of Wayne. The only parts of the opinion of the Supreme Court which are relevant here are as follows:

> "It is urged, however, that the Circuit Judge failed to consider the effect to be given to the assignment of April 2nd, fixing a fee of $1,000 for collecting a one-half interest, and failed to attach sufficient importance to the decision of the Federal Judge in the intervention proceedings.
>
> *The assignment of April 2nd was merged into the assignment of April 11th*, and its persuasive force is not sufficient to affect the result.
>
> It is said that Judge Archbald's decision is a final adjudication in the Federal Court that defendant was the absolute owner of one-half the judgment, and therefore, since defendant was merely making a present to

complainant, he had a right to fix his compensation for his services. In the course of his opinion Judge Archbald said:

'Col. Myers explained to Mr. Radford that one-half interest had already been assigned George, and it was recognized that if he held onto the assignment, there would be little, if anything, coming to Col. Myers after he had settled with Radford. But it was stated by Col. Myers that the assignment was without consideration, and if he succeeded, as he hoped, in getting George to surrender it, then Radford was to account to him for that interest also, after deducting for expenses and services. *The trust relation so established still continues.*'

* * * * * *

We deem it to be clear that Judge Archbald did not intend to determine, and did not, in fact, determine, that the trust relations between defendant and Col. Myers no longer existed" (pp. 42-3).

The Supreme Court of Michigan therefore decided: first, that the assignment of April 2, 1900, was merged in the assignment of April 11, 1900, and thereby lost all force; and second, that the assignment of April 11, 1900, did not operate as an absolute sale by George W. Myers of his one-half interest to appellant, and that appellant should account to the appellee therefor; and that it could fix the value of the appellant's services contrary to the contracts with, and assignments to, him and the Federal Decision thereon.

The sole question raised by this writ of error is whether due effect was given to the decision rendered in the federal court upon the identical contracts construed by the lower courts, all the facts relating thereto being the same.

Specification of Errors.

The errors assigned (p. 48) may be simplified and discussed under two specifications, namely: that the Supreme Court of Michigan erred in that it did not give to the Federal Decision due effect, by holding:

(a) That the assignment to the plaintiff in error of April 2, 1900, by George W. Myers of his one-half interest in the Luzerne County Contract was merged in his assignment of April 11, 1900; and

(b) That the plaintiff in error was not the owner of such one-half interest, and must account therefor to the defendant in error.

ARGUMENT.

An analysis and discussion of the Federal Decision as to the facts and the contracts and the law established by it will make the errors alleged manifest in the light of the principles of *res judicata*.

I.

Analysis of the Federal Decision.

The decision of the United States Court was rendered in an intervention proceeding in the main suit in which Col. Myers, as plaintiff, recovered a judgment (the assignments to plaintiff in error specifically permitted suit in his name) against the County of Luzerne, as defendant. The County of Luzerne, because of the conflicting claims thereto, on leave granted, paid one-half of the judgment against it into the United States Court, such payment being in the nature of an interpleader to determine who owned the fund; George W. Myers, son of the plaintiff, having served notice on the defendant that he owned said one-half.

Krippendorf vs. Hyde, 110 *U. S.*, 276; 28 *L. Ed.*, 145.

The opinion and the order of the court thereon are entitled in the main suit.

The first paragraph of the opinion (pp. 18-22) states the purpose of the proceeding:

> "On February 25, 1903, the plaintiff recovered a verdict in this case for $14,750, and the present controversy is over the ownership of one-half of it, which, on account of the conflicting claims thereto, the defendant has had leave to pay into court. Ownership is asserted on the one hand by the petitioner, George W. Radford, and on the other, by George W. Myers, the plaintiff's son."

At the hearing on the order to show cause why the County should not have leave to pay the money into court, and later, at the hearing upon the respective rights in the fund of the parties before the court, Col. Myers made no claim to it, other than his testimony, that before the assignment of April 2, 1900, by the son to the plaintiff in error, to which he, Col. Myers, had assented, he claimed the assignment by him to his son of that half interest was without consideration, and on that account sought to get the son to surrender the assignment, but failed. The jurisdiction of the court, like the purpose of the proceeding, was to determine "to whom the fund belongs," and relieve the County of Luzerne from further liability to all parties, including Col. Myers.

The second paragraph merely recites the facts out of which the claim against Luzerne County arose, and the institution of suit first in the state court to enforce it and the proceedings therein.

The third paragraph sets forth the assignment of the half interest in the Luzerne County Contract by Col Myers to his son, George W. Myers, the claim of Col. Myers that the assignment to his son was without consideration, the contrary assertion of his son, and the determination of the court that, by the assignment, the son acquired a one-half interest in the contract. And the son's whole claim rested upon the validity of this assignment—"It is by virtue of it that he makes his present claim."

The fourth paragraph sets forth the consultation of Mr. Radford by Col. Myers about the claim against Luzerne County, the settlement between them of December 9, 1899, the assignment by Col. Myers to Mr. Radford of his interest in the contract as collateral security to his indebtedness to Mr. Radford, and the establishment of a trust relation between Mr. Radford and Col. Myers as to that half, and Col. Myers' explanation that he hoped to get George to surrender, because it was without consideration, the half interest in the contract which he had previously assigned to him, and that, if George should surrender it, Mr. Radford could account to Col. Myers for that half interest also, it being realized, at the time, by both Col. Myers and Mr. Radford, that unless George did surrender the assignment to his father, the latter's interest would little more than settle his indebtedness to Mr. Radford. It is this paragraph which apparently confused the lower court, and since in its opinion it omitted from its quotation therefrom the very vital context, it may be well to make a more complete quotation—with this context, it reads:

> "This was the condition when on December 9, 1899, Col. Myers, to whom Mr. Radford had made several previous loans of money, applied to him for additional accommodation, and proposed to turn over his interest in the contract as collateral security. He asked for a hundred dollars, which, with that already advanced, would amount, as was figured, to over $4,600. Col. Myers explained to Mr. Radford that one-half interest had already been assigned to George, and *it was recognized that if he held onto the assignment, there would be little, if anything, coming to Col. Myers after he had settled with Radford.* But it was stated by Col. Myers that the assignment was without consideration, *and if he succeeded, as he hoped, in getting George to surrender it,* then Radford was to account to him for that interest also, after deducting for expenses and services. The trust relation so established still continues.
>
> So the matter stood until the next April. At that time George, *who had been several times ineffectually approached* by both his father and Radford, came for-

ward with the proposition to turn over his interest to Radford on condition that the latter would go on and prosecute the suit, *and account to him for one-half of what he recovered, after deducting a fee of* $1,000 *which Radford was to have as attorney*, and half of the necessary disbursements. *This was agreed to*, and a writing executed April 2, 1900, *by which on the conditions named*, he assigned and surrendered his interest *to Radford; to which Col. Myers, who was present, gave his assent.*"

The fifth paragraph (part of which is quoted above) recites the ineffectual endeavors by both Col. Myers and Mr. Radford during the next few months to get George to surrender the assignment of the other half interest which he had then held nearly four years; the making of the assignment of April 2, 1900, by George to Mr. Radford of that half interest, whereby Mr. Radford was to get a $1,000 fee for the collection of that half and to account to the son, and not the father, for the balance; and the assent of Col. Myers to it.

The sixth paragraph recites the circumstances surrounding the assignment to Mr. Radford of April 11, 1900, by George of his interest in the assignment of April 2, 1900; his offer of sale, Mr. Radford's satisfaction with the contract of April 2, 1900, the agreement upon the price of $150, the giving of the guarantee by George that he owned that half interest, and the sale.

The seventh paragraph recites the claims of George that this assignment to Mr. Radford of April 11, 1900, was not intended to be a sale, but merely to be collateral security to a loan, and that it was obtained by fraud, the testimony refuting these claims, including his statement to his father upon the latter's return from Mississippi that he had sold his interest to Mr. Radford, and his apathy toward the matter after that until the verdict was recovered.

The eighth paragraph states the claim of George that Mr. Radford became his attorney under the agreement of April

2, 1900; and that, because of this, the assignment of April 11, 1900, was invalid as a sale. It then determines that under the agreement of April 2, 1900, Mr. Radford was the attorney of George W. Myers; that it was his duty under that agreement to account to George for the balance above his fee, etc., and that the proceeding was elastic enough to compel such an accounting (as it would have been had the decision determined Mr. Radford was in a trust relation as to this interest with the father); and such an accounting to the son under the contract of April 2, 1900, would have been required by the court had the son succeeded in setting aside the assignment of April 11, 1900. The paragraph then discusses the rule of law as to the relation between an attorney and his client and holds the sale by George to Mr. Radford to be valid under that rule: because of the equal position of the parties, what was bought and the uncertainty of its value, the federal judge determined no advantage had been taken in its purchase.

The paragraph further recites the institution of the new suit in the federal court, the narrow point upon which it turned, and the recovery of the verdict.

The opinion concludes by directing that an order be drawn awarding the fund absolutely to Mr. Radford and dismissing the son's claim.

The pertinent recital of the order entered pursuant to the opinion of the federal judge is as follows:

> "it is now ordered * * * that the assignment from respondent to petitioner of the 11th day of April, one thousand nine hundred, is valid, and an absolute assignment of all the interest of said respondent in the said contract between Elijah E. Myers and the County Commissioners of Luzerne County of date February 22, 1895, and that the fund in court be awarded to petitioner, George W. Radford; and that the claim of George W. Myers, respondent, be dismissed" * * * (p. 17).

II.

Rules of Res Judicata.

Matters in issue and decided by the judgment of a court having jurisdiction of the parties and the subject matter of the suit are conclusively settled, and cannot be litigated again between the parties to that suit or their privies.

23 *Cyc.*, 1215.

Hopkins vs. Lee, 19 *U. S.* (6 *Wheat.*), 109; 5 *L. Ed.*, 218.

Cromwell vs. Sac County, 94 *U. S.*, 351; 24 *L. Ed.*, 195.

The Johnson Co. vs. Wharton, 152 *U. S.*, 252; 38 *L. Ed.*, 429.

Southern Pacific R. Co. vs. United States, 168 *U. S.*, 1; 42 *L. Ed.*, 355.

A right, question or fact once put in issue and decided is concluded in any future action between the same parties or their privies, whether the subsequent action is for the same or a different cause of action.

New Orleans vs. Citizens' Bank, 167 *U. S.*, 371; 42 *L. Ed.*, 202.

A judgment is a bar to any future action between the same parties or their privies upon the same cause of action.

Cromwell vs. Sac County, 94 *U. S.*, 351; 24 *L. Ed.*, 195.

Dowell vs. Applegate, 152 *U. S.*, 327; 38 *L. Ed.*, 463.

Werlein vs. New Orleans, 177 *U. S.*, 390; 44 *L. Ed.*, 817.

Or as this last rule has more recently been very aptly stated —a judgment is conclusive as to all the *media concludendi*.

United States vs. California & O. Land Co., 192 *U. S.*, 358; 48 *L. Ed.*, 479.

American Exp. Co. vs. Mullins, 212 *U. S.*, 312; 53 *L. Ed.*, 527.

United States vs. Southern P. R. Co., 223 *U. S.*, 565; 56 *L. Ed.*, 555.

"Where the second suit is upon the same cause of action set up in the first suit, an estoppel by judgment arises in respect to every matter offered or received in evidence, or which might have been offered, to sustain or defeat the claim in controversy; but where the second suit is upon a different claim or demand, the prior judgment operates as an estoppel only as to matters in issue or points controverted and actually determined in the original suit. Cromwell vs. Sac County, 94 U. S., 351-353, 24 L. Ed., 195, 197, 198; Southern P. R. Co. vs. United States, 168 U. S., 1, 50, 42 L. Ed., 355, 357; Virginia-Carolina Chemical Co. vs. Kirven, 215 U. S., 252, 257, 54 L. Ed., 179, 184."

Troxell vs. D., L. & W. R. Co., 227 *U. S.*, 434; 57 *L. Ed.*, —.

In 2 Black. Judgm. (2nd Ed.), Sec. 506, these rules are stated as follows:

"For first, it" (i. e., a judgment) "may be brought forward as evidence of some one particular point which is involved in a different litigation between the same parties. Or, secondly, it may be offered as a bar to the whole action on the ground that it is a determination previously had between the same parties, of the same controversy. * * * In speaking of the former case, we use the phrase 'conclusiveness of the judgment;' in referring to the latter, we employ the term 'bar by former judgment.' The differences between the two cases are found chiefly in two regards, viz.: as respects the identity of the subject-matter in the successive suits, and as respects the scope of the estoppel, as to the matters determined by it. In the first place, if the former judgment is offered as evidence on a particular point, it is immaterial that the causes of action in the two suits are different, but it is necessary that that point should have constituted an issue in both suits. * * * The judgment in the second case constitutes an absolute bar to a second action for the same cause."

Section 726. "For the purpose of ascertaining the identity of causes of action, the authorities generally agree on accepting the following test as sufficient: Would the same evidence support and establish both the present and the former cause of action?"

"Those are held to be parties who have a right to control the proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from the decision."

2 *Black., Judgm.* (*2nd Ed.*), *p.* 808.

23 *Cyc.*, 1240.

"Matters which follow by necessary and inevitable inference from the judgment * * * are equally covered by the estoppel as if they were specifically found in so many words."

23 *Cyc.*, 1306, citing among other cases:

Nat. Foundry Co. vs. Oconto Co., 183 *U. S.*, 216; 46 *L. Ed.*, 157.

Werlein vs. New Orleans, 177 *U. S.*, 390; 44 *L. Ed.*, 817.

Winona Land Co. vs. Minn., 159 *U. S.*, 526; 40 *L. Ed.*, 247.

"The established rule is that if the parties in the former action be the same as in the present, then every matter and question of fact and of law that was necessarily involved in the consideration and determination of the former issue shall be conclusive upon the present. Southern P. R. Co. vs. United States, 168 U. S., 1, 48; 42 L. Ed., 355, 376, and cases cited."

Nalle vs. Oyster, U. S., decided June 16, 1913.

The estoppel covers matters which were actually determined whether technically put in issue by the pleadings or not.

23 *Cyc.*, 1304.

2 *Black., Judgm.* (*2nd Ed.*), *Sec.* 614.

There need be no pleadings between co-parties in order that they may, as between themselves, be bound by the judgment, if they were essentially adversary parties, or their respective rights were in issue.

(1903) *Baldwin vs. Haneey*, 204 *Ill.*, 281; *affirming* 104 *Ill. App.*, 84.

(1911) *Kohly vs. Fernandez*, 133 (*N. Y.*), *App. Div.*, 723; 118 *N. Y. S.*, 163; *affirmed* 201 *N. Y.*, 561.

Corcoran vs. Chesapeake & Ohio Canal Co., 94 *U. S.*, 741; 24 *L. Ed.*, 190.

Louis vs. Brown Township, 109 *U. S.*, 163; 27 *L. Ed.*, 892.

The above is also the Michigan rule.

(1883) *Waldo vs. Waldo*, 52 *Mich.*, 91, 93.

(1910) *Scripps vs. Sweeney*, 160 *Mich.*, 148, 177 *et seq.*

The opinion is the repository of the law of the decision.

Corcoran vs. C. & O. Canal Co., 94 *U. S.*, 741; 24 *L. Ed.*, 190.

National Foundry & Pipe Works vs. Oconto City W. Supply Co., 183 *U. S.*, 216; 46 *L. Ed.*, 157.

These rules are fundamental and apply to legal proceedings generally.

23 *Cyc.*, 1223.

Hopkins vs. Lee, *supra*.

III.

The Federal Decision is a Bar.

The Federal Decision is a bar to this litigation between the plaintiff in error and Col. Myers as to the half of the judgment paid by Luzerne County into the United States court.

Both Col. Myers and Mr. Radford were parties before the federal court. Col. Myers was the plaintiff in the main suit and therefore a party of record. Mr. Radford petitioned to withdraw the fund from court; and Col. Myers verified the petition (p. 13). Both were witnesses in the intervention proceedings in which the decision was rendered (p. 10). Col. Myers could have asserted his rights and appealed from the decision awarding the fund absolutely to Mr. Radford. In his testimony Col. Myers did actually assert the only

claim to the fund he had, that the assignment by him to his son of the half interest in the contract therein involved was without consideration—for in neither the state court nor the federal court was any proof offered by him to substantiate the allegation of his bill of complaint that Mr. Radford purchased the half interest from George pursuant to any agreement. On the contrary, the record in the federal court showed that he knew nothing of the purchase until after it was made, that he was in Mississippi at the time of the purchase and on his return first learned of it from his son (p. 12).

The purpose of the federal proceeding, the jurisdiction of the court, and the matter in issue for the court to decide, was—what were the rights of the parties before the court in the identical fund, which was the principal part of the subject matter in litigation in the lower courts? For the same subject matter was common to, and the same issue was involved in, both litigations. On the face of the proceedings in the federal court, Col. Myers's rights to the fund, if he had any, were necessarily involved, for the judgment was recovered in his name and he was entitled to it as a matter of course unless others claimed it. Therefore Col. Myers not only had the right, but he was in duty bound, in order to protect his rights against his son as well as Mr. Radford, to assert in the federal proceeding any claim he had to that fund.

For the son was asserting his ownership against his father as well as against Mr. Radford, and it cannot be doubted that, if the decision had been in favor of the son and the assignment from the son to Mr. Radford of April 11, 1900, had been set aside and the fund had been awarded according to the contract of April 2, 1900, Col. Myers could not have asserted any right, legal or equitable, in the fund in any subsequent action. But instead of claiming any rights in the fund, Col. Myers verified Mr. Radford's petition to withdraw it, thereby recognizing Mr. Radford's right to the

fund in accordance with his written assent to the contract of April 2, 1900; and therefore there were no formal pleadings between them. That does not affect the rule under the decisions cited, supra, for Col. Myers and Mr. Radford were essentially adversary parties as to any rights either had in the fund. The issue in the federal court made all the parties adversary of necessity; it was for each to present any claim of ownership he had, and, as a matter of fact, every bit of evidence before the lower courts as to the claim of Col. Myers to the fund was before the federal court. And the validity of the assignment (Par. 2, p. 15) by Col. Myers to his son, dated January 2nd, 1896, was in issue and decided in the federal proceeding—and the rights of all the parties before the court were fully covered in the testimony and the opinion, not only as to the half of the judgment paid into court, but as to the other half as well. In the federal proceeding, Col. Myers supported Mr. Radford's claim of ownership in accordance with the written contract to which he had assented—he made no claim to the fund himself. But in the lower courts Col. Myers, in his bill of complaint, after alleging (Par. 2, p. 2) the validity of his assignment to his son, alleged that he was the equitable owner of that identical fund by virtue of an agreement between him and Mr. Radford, of which he never offered any proof in either state or federal court. Therefore Col. Myers' claim in the lower courts is simply a claim of ownership of that fund, which he ought to have presented in the federal court and was estopped to present in the lower courts.

In both the federal and lower courts Mr. Radford claimed ownership of the same fund by virtue of the same instruments; only in the lower courts he also claimed that his ownership under those contracts had been established in the federal court. Col. Myers was a party to those very contracts. He was the assignor of, and in privity with, his son as to the contract interest involved; he was doubly in privity by his written assent to the assignment of April 2, 1900. And the

integrity of every one of these assignments was established, and the ownership of the fund was determined, by the federal court to be in Mr. Radford, derived by him through a chain of instruments from Col. Myers himself, the validity and meaning and effect of every one of which was in issue and decided and written into the opinion of the court. And the order awarded the fund in court absolutely to Mr. Radford subject to no equitable rights of Col. Myers therein: and all the rights of all the parties therein were thereby finally adjudicated, and Mr. Radford has never waived the effect of the adjudication.

No question of impeachment of that decision on any ground was raised—its validity was admitted. The lower courts did not even consider the effect of the adjudication as a bar to this litigation relating to that fund. The lower courts tacitly admitted the Federal Decision to be binding on Col. Myers, and only partially construed it as to what was concluded by it. The suit in the Michigan courts was, as to the half of the judgment paid into the federal court and adjudicated upon, merely the relitigation of a matter already settled by a previous litigation. All that was new was the allegation of the bill of complaint as to an agreement between Col. Myers and Mr. Radford, no proof of which was offered.

The decision of the lower courts was rendered upon identically the same record as that of the Federal Decision, so far as the questions here involved are concerned. In fact, the federal record was used in the lower courts by opposing counsel in an endeavor to bring about a different decision. The assumption of jurisdiction by the lower courts was no more or less than an attempt to review the decision of the federal court upon the same record before it, and to reverse that decision and award the same fund contrary to that decision, to Col. Myers instead of to Mr. Radford.

The following language of Mr. Justice Brown in the case of County of Franklin vs. German Savings Bank, 142 U. S. 93, 35 L. Ed., 948, at page 950, is applicable:

"But we know of no case which goes to the extent of holding that where a court having complete jurisdiction of the case has pronounced a decree upon a certain issue, such issue may be retried in a collateral action, even although the evidence upon which the case is heard is sent up with the record. If this were possible, then in every such case where a judgment or decree is pleaded by way of estoppel, and the record shows the evidence upon which it was rendered, the court in which the estoppel was pleaded would have the power to retry the case and determine whether a different judgment ought not to have been rendered."

IV.

The Federal Decision is also a Conclusive Adjudication.

But besides being a bar, the Federal Decision actually and necessarily decided the questions raised on this writ of error and thereby conclusively settled them.

The order of the federal court awarding the fund to Mr. Radford raised the bar to the litigation in the lower courts of what might have been litigated in the federal court. But the opinion contains the law of the decision, and shows at length the reasoning and grounds upon which the order was based, and that the questions raised by this writ of error were necessarily involved and actually determined thereby.

The opinion expressly decides, or necessarily involves in its express determinations, and therefore conclusively settles, the following points:

a. The validity of the assignment of January 2, 1896, from Col. Myers to his son, whereby the son became the owner of the one-half interest;

b. The validity of the assignment of April 2, 1900, from the son to Mr. Radford, whereby a right vested in Mr. Radford to an attorney fee of $1,000 out of that half interest, and a trust relation became established between Mr. Radford and the son as to the balance;

c. The validity of the assignment of April 11, 1900, from the son to Mr. Radford, whereby Mr. Radford became the owner of that half interest;

d. That by the assignment of April 11, 1900, Mr. Radford acquired the interest of the son in the contract of April 2, 1900, and consequently there was no merger;

e. And that there was no trust relation between Mr. Radford and Col. Myers as to that half interest, which alone was involved in the proceeding.

And it is clear from the face of the decision that the trust relation referred to as existing between Mr. Radford and Col. Myers related to the other half interest which Col. Myers had assigned to him as collateral security, and which he then held in trust because it had already been paid over by the County Commissioners (pp. 6, 37).

a.

The first link in Mr. Radford's chain of title to this fund is the assignment by Col. Myers to his son. It is also the most important in this case, because Col. Myers's only claim rested upon its invalidity; and the son's whole claim rested upon its validity. If it had been determined to be invalid, Col. Myers would have been entitled to the fund; and the very basis of the son's claim would have been taken from under him. This assignment (Ex. 2, p. 15) recites that it was for a valuable consideration, and that the son was already interested in the contract. Col. Myers claimed that it was without consideration and its validity was clearly in issue. The federal court unquestionably decided it to be valid—that was conceded by the allegation in paragraph 2 (p. 2) of the bill of complaint (where the date of the assignment is incorrectly printed as 1898 instead of 1896) and also by the lower courts (p. 12). And by so deciding, the federal court necessarily determined that the son thereby became and remained the owner of that half interest until, on April 2, 1900, he assigned it to Mr. Radford.

b.

Nor is any question made by anyone as to the validity of the assignment to Mr. Radford of April 2, 1900, by the son of this interest. This assignment (Ex. 3, pp. 15-16) first recites:

> "That whereas, the said George W. Myers, by assignment dated January 2nd, 1896, made between Elijah E. Myers and George W. Myers, *acquired a one-half interest* in and to a certain contract made and entered into between said Elijah E. Myers and the Board of County Commissioners for the County of Luzerne, in the State of Pennsylvania, for constructing a county building in the City of Wilkesbarre, in said State,"

thereby affirming the validity of the assignment made by Col. Myers to his son. The conditions upon which the son made the assignment to Mr. Radford are stated in said contract as follows:

> "the said George W. Radford *to account to the said George W. Myers* for all amounts received on account of said one-half interest after first deducting therefrom one thousand dollars as attorney fee of said George W. Radford, also one-half of all court costs and disbursements and other legal services incurred and to be incurred in the collection of the moneys due or to become due under said contract."

And Mr. Radford, in order to protect his rights under said contract, required Col. Myers to assent thereto because of his claim that the assignment to his son was without consideration; which assent, written at the bottom of the contract, is as follows:

> "I hereby assent to the foregoing.
> E. E. Myers."

The part of the opinion passing upon this assignment reads:

> "Subject to the duty of accounting, this vested in Radford entire control of the matter" (pp. 19, 20).

And it also explicitly states that this meant the duty to account to the son, and not to Col. Myers—the opinion reads:

> "we cannot disregard the fact that he was to account to George in the end for all that he got over and above

> the compensation and deductions agreed upon, whether it was large or little" (p. 21).

That was Mr. Radford's duty under the agreement; and, as to his right, the opinion reads:

> "By the existing arrangement Radford was already assured of the first $1,000 recovered and his disbursements" (p. 22).

This is the clear statement of this contract to which Col. Myers assented. And its validity is here determined as a whole, and its full meaning is written point by point in clear cut language into the adjudication upon it. No one can doubt that under the decision, a right vested in Mr. Radford to an attorney fee of $1,000 out of this half interest; and that, as to the balance, a trust relation was established between Mr. Radford and George W. Myers: and that George W. Myers's remaining interest in the contract was a right to an accounting for this balance by Mr. Radford, subject to which right Mr. Radford owned this half interest; and that Col. Myers had no interest and no equitable rights in it whatever. That is the plain meaning of the adjudication, all of which the lower courts ignored.

c.

The next point is equally well established—namely, the validity of the assignment of April 11, 1900, from George W. Myers to Mr. Radford. This assignment of April 11, 1900, was written in pen and ink on the bottom of the agreement of April 2, 1900 (Ex. 4, p. 16). The body of it is as follows:

> "For and in consideration of one dollar and other valuable considerations to me in hand paid by George W. Radford, the receipt whereof is hereby acknowledged, I hereby sell, assign, transfer and set over to George W. Radford all my interest in and to the foregoing agreement, and in and to the original contract, assigned as in said agreement specified, *and I also hereby guarantee that I am the owner of a one-half interest* in said original contract; that I have not otherwise disposed of said contract or my interest therein, *and that I have full and complete right to assign the same as herein.*"

The above guarantee by George W. Myers of his ownership of said one-half interest in the Luzerne County Contract and of his right to assign the same, like Col. Myers's written assent to the assignment of April 2, 1900, in express terms reaffirming the validity of his assignment of said one-half interest to his son, operated to protect Mr. Radford's rights under said assignments as against the claim of Col. Myers, previously made, that the assignment to his son was without consideration. Much of the federal opinion is taken up with the discussion of its validity as a sale, by the son to Mr. Radford, of his interest in the assignment of April 2, 1900, which was simply his right to an accounting thereunder. The opinion holds it valid as a sale of that right, as the lower courts concede; and the order reads:

> "the assignment from respondent to petitioner of the 11th day of April, one thousand nine hundred is valid, and an absolute assignment of all the interest of the said respondent in the said contract. * * *"

This assignment completes and perfects Mr. Radford's chain of title. For it would seem the necessary logic of the situation that when Col. Myers parted with this interest to his son; and the son made a contract with Mr. Radford whereby Mr. Radford was to have $1,000 and other sums out of it and account to him for the balance, to all of which Col. Myers assented in writing; and the son then sold to Mr. Radford his right to an accounting for the balance; that the latter necessarily became the owner of all of it. And his ownership is worked out step by step by these various assignments, the validity and effect of every one of which had been *res judicata*, for over four years before the bill was filed in the lower court.

d.

The lower court by its doctrine of merger questions what was so bought on April 11, 1900. This is right in the teeth of the Federal Decision which reads on that point as follows:

> "By the existing arrangement, Radford was already assured of the first $1,000 recovered and his disbursements; and George's interest was represented only by

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what was over and above that, *and it was for that that they dealt.*" (p. 22.)

To assert in the face of this language, that the agreement of April 2, 1900, insuring Mr. Radford a fee of $1,000 out of that half interest, was merged in the sale of April 11, 1900, is a complete admission of the main point raised on this writ of error—namely, that the ownership of the entire half interest was decided to be in Mr. Radford; because such merger would be to establish the validity of the sale, whereby Mr. Radford obtained larger rights.

e.

There remains only the misinterpretation by the lower court of the meaning of the following quotation made by it from the Federal Decision: "The trust relation so established still continues." The trust relation thus referred to by the federal judge as existing between Mr. Radford and Col. Myers, was as to the other half interest which Col. Myers had assigned to Mr. Radford as collateral security; it does not relate to the half interest assigned by his son to Mr. Radford. On the contrary, the decision establishes beyond controversy that there was no trust relation between Mr. Radford and Col. Myers as to that half interest. The entire decision shows this.

In the first place, the purpose of the proceeding and the jurisdiction of the court was to determine the rights of these parties—Col. Myers, his son and Mr. Radford—to this fund. And had the federal judge determined that there was, as to the fund in court, a trust relation between Col. Myers and Mr. Radford, he would have ordered an accounting by Mr. Radford for it, which the proceeding was "elastic" enough to permit. But, instead, the fund was awarded absolutely and unconditionally to Mr. Radford, who was determined to be the owner of it; and no trust relation as to the fund was even hinted at as existing under the decision, and the holding of the lower courts is squarely against the order.

And in the second place, the context about this quotation makes it perfectly clear that the federal judge had reference

only to the other half interest which Mr. Radford held in trust as collateral security to Col. Myers's indebtedness to him. Immediately preceding it, the opinion recites the transaction by which Col. Myers assigned his interest in the contract as collateral security. To be sure, it does also state that, at the time, Col. Myers told Mr. Radford of the previous assignment of a half interest to his son, and "that the assignment was without consideration, and *if he succeeded as he hoped*, in getting George to surrender it, then Radford was to account to him for that interest also;" but immediately following, the opinion shows that George refused so to surrender it, having been "ineffectually approached to that end;" and George claimed even at the time of the decision that his father's assignment was supported by a valuable consideration, and the federal judge determined the assignment to be valid. George assigned his interest to Mr. Radford and never surrendered it to his father. Consequently, this half interest never could have passed into a trust relation between Mr. Radford and Col. Myers under the assignment, as the son, not Col. Myers, assigned it to Mr. Radford. And when Col. Myers assented to the assignment of April 2, 1900, which recited that the son had acquired such one-half interest from him and that Mr. Radford was to account for all of it above his attorney fee to the son, he relinquished all expectation of having his son surrender it to him, so that it could pass under the assignment to Mr. Radford into the trust relation mentioned by the federal judge.

Further, there could have been no trust relation "so established" between Col. Myers and Mr. Radford as to the George W. Myers half interest, because neither Mr. Radford nor Col. Myers then had it. And it never could have passed under the assignment by Col. Myers to Mr. Radford because Col. Myers never had it again. The purposes of the agreement of April 2, 1900, explicitly stated in it, to which Col. Myers assented, absolutely negatived any trust relation between Col. Myers and Mr. Radford as to that half interest—for Mr. Radford

was to account to the son for all above the $1,000 fee and disbursements. And finally Mr. Radford, nine days later, purchased with his own money the balance from the son, without the knowledge of, and while, Col. Myers was in Mississippi (p. 12).

And, if Col. Myers instead of Mr. Radford, according to the federal judge's view, was the real party in interest as to the fund, then that part of the federal opinion as to the relation of attorney and client between the son and Mr. Radford under the agreement of April 2, 1900, the discussion of the law as to a purchase by an attorney from his client, and the value of the claim bought by Mr. Radford from the son—all would be absolutely irrelevant.

But we do not need to rely upon argument from the facts and the contracts which are established by the decision. For all these matters were expressly adjudicated by the decision—and the argument from the facts and contracts and the nature of the matters considered in the opinion simply serves the purpose of emphasis.

Because it was decided that there was no trust relation between Col. Myers and Mr. Radford as to this half interest. In deciding that Mr. Radford would have had to account to the son under the agreement of April 2, 1900, for the balance of this half interest, the federal judge decided Mr. Radford was under no duty to account to the father. This necessarily involved an adjudication by the federal judge that Mr. Radford was in no trust relation as to this half interest with Col. Myers—for Mr. Radford could not be required to account to both the father and son for this half interest under their adverse claims of ownership of it.

Nor can any question be made as to George's making an absolute sale of the balance to Mr. Radford, subject to no duty by Mr. Radford to account to Col. Myers for any of that half interest. The opinion expressly covers this point. It reads:

> "This assignment was absolute in form and was intended by George as a complete disposition to Radford for $150, of the half interest derived from his father" (p. 20).

Therefore, there was necessarily involved in the Federal Decision—in the opinion and order awarding the fund to Mr. Radford—that Mr. Radford did not hold this half interest in trust for Col. Myers, but that he became the absolute owner of it through these assignments, which constitute, as thus adjudicated, a perfect chain of title. The subject matter was the same, the parties were the same, the jurisdiction of the court and the purpose of the proceeding was to determine the ownership of the fund which was directly and solely in issue; and the rights of all the parties to it were adjudicated and it was determined to belong, and awarded absolutely, to Mr. Radford.

Conclusion.

Because of the radical differences between the opinions and decrees of the federal and lower court, we feel justified in calling attention briefly to the inaccuracies and inequities of the latter, for the purpose of showing more clearly the errors which led to the reversal of the former.

This case was instituted and prosecuted in the lower courts on the sole theory that on April 11, 1900, Mr. Radford made the purchase of the son's interest pursuant to an alleged agreement of that date with Col. Myers, which agreement Col. Myers failed to assert in the federal court. The trial judge, however, held this claim open for proof and not concluded by the Federal Decision (p. 12); which ruling failed utterly to consider the effect of that decision as a bar, or the effect of the assignment of April 2, 1900. The Federal Decision foreclosed such a claim had proof been offered of it; but the record was barren of any proof of it, or of any agreement between Col. Myers and Mr. Radford relative to the purchase of that half interest; therefore the theory upon which

the case was instituted was abandoned in their opinions by the lower courts, and the trial judge asserted instead thereof that Mr. Radford, in the intervention proceedings in the federal court,

> "clearly disclaimed ownership of that interest, and that he then explicitly testified that he held the assignment beneficially for Col. Myers" (p. 34).

All the testimony referred to by the trial judge was before the federal court (the trial judge so states), and the federal court held at the beginning of its opinion:

> *"Ownership is asserted on the one hand by the petitioner, George W. Radford."* (p. 18).

And the order of the court awarded the fund absolutely to Mr. Radford, with the full knowledge of, and unquestioned by, Col. Myers for over four years. The above language quoted from, as well as the whole of, the federal opinion is so clearly based on no disclaimer of ownership by Mr. Radford as to show the learned trial judge's error. But it is immaterial, because the Federal Decision itself is certainly conclusive as to the effect to be given testimony involved in its determination.

But the learned trial judge was apparently not quite satisfied with the soundness of his overruling of the Federal Decision, as he closed his opinion (p. 36) with the assertion that it was actually admitted in this case that Mr. Radford took the assignment "from the son" "for the father's benefit." There was no such admission—Mr. Radford's position was as stated in his answer: he never waived his rights under the Federal Decision.

The Supreme Court of Michigan, finding no admission of record that Mr. Radford held the George W. Myers half interest in trust for Col. Myers and no proof whatever to support the trial judge's view of the Federal Decision or the attempt to evade it alleged in the bill of complaint,—because there was no proof of a trust relation between Col. Myers and Mr. Radford if that question had been open,—took the new posi-

tion that the sentence, "The trust relation so established still continues," in the Federal Decision itself, applied to the George W. Myers half interest: which would admit that decision covered the rights of Col. Myers to the fund, but would be absolutely opposed to the order of the federal court awarding it to Mr. Radford. And in order to give this quotation from the Federal Decision apparent application to the George W. Myers half interest, it quotes from letters written by Mr. Radford before that decision—the letters being dated March 16 and 27, 1903, and the Federal Decision having been rendered July 29, 1903—in which he states his voluntary intention to give Col. Myers the benefit of such half interest after taking the value of his services out of it, because he then thought that Col. Myers's claim that the assignment he made to George W. Myers was without adequate consideration was true. These quotations add force to Mr. Radford's answer: they add no force to the position of the lower court, because they are not relevant and can in no way alter the decision itself And it is perfectly clear that the Federal Decision determined that there was no trust relation between Mr. Radford and Col. Myers as to that half interest and that Mr. Radford owned it; and that the trust relation the federal judge meant was as to the other half interest, which came into the opinion by way of context and dictum only —the relations of all these parties to the whole judgment having been covered in the testimony, as shown by the opinion.

It may also be of interest to consider the inequitable effect of the holding of the lower courts. They admit the validity of all these assignments. Therefore, they necessarily admit that Mr. Radford was, under the agreement of April 2, 1900, before the agreement of April 11, 1900, entitled to an attorney fee of $1,000 and was bound to account to the son for the balance of that half interest, and that Col. Myers was in no way entitled to any of that half interest. They then hold that under the assignment of April 11, 1900, by the son of the balance of that half interest, Mr. Radford thereby

paid $150 of his own money in order to lose his right to an attorney fee of $1,000 for the collection of that half interest and to switch his duty to account to the son for the balance of that one-half, to a duty to account to Col. Myers for all of that half interest—and this without any proof whatever of any agreement between Mr. Radford and Col. Myers, or between Mr. Radford and the son, or between Col. Myers and his son, that this was to be the effect of the purchase: and upon the identical record that was before the federal judge. It is inequitable, and squarely against the facts, the assignments and their effect and the law established by the Federal Decision.

Further, in order to justify his belittling the value of Mr. Radford's services, the trial judge held (p. 35):

> "In weighing the reasonable compensation for Mr. Radford's services in the Luzerne County litigation, his direct interest in the outcome may well be borne in mind. He was interested as the equitable holder of a one-half interest in the claim, as collateral for the payment of Colonel Myers's note. He thus had a personal as well as a professional interest in the matter. He was serving himself as well as his client."

The only appropriate comments on the above are, that as to Mr. Radford's services as to the half assigned him by Col. Myers, his services were rendered to aid Col. Myers to obtain funds with which to pay his debt; and that as to the half assigned to him by the son, if Mr. Radford was "serving himself" in regard thereto, then he was the absolute owner thereof, as decreed by the federal court.

It is respectfully submitted that the decree of this Honorable Court should be entered reversing the decree of the Supreme Court of Michigan, and the cause remanded accompanied by the mandate of this Court directing the Supreme Court of Michigan to enter a decree therein reversing the decree of the Circuit Court for the County of Wayne and directing the Supreme Court of Michigan to enter a decree

in said cause in favor of the appellant and cross-complainant for such an amount as he will be entitled to upon an accounting in which he shall be credited, in accordance with the allegations of his answer and cross-bill, with the one-half of the judgment in Myers vs. County of Luzerne, awarded to him by the opinion and order of the Circuit Court of the United States for the Middle District of Pennsylvania.

This brief is filed with the plaintiff in error's motion to place this cause on the summary docket, and if said motion is granted, the cause will be submitted hereon.

Thomas A. E. Weadock

Attorney for Plaintiff in Error.

9

Supreme Court of the United States

October Term, 1917.

No. [illegible]

[illegible] FILED.

OCT 8 1917

JAMES D. McKENNEY,
Clerk.

GEORGE [illegible],
Plaintiff in Error,

vs.

MARY D. [illegible], Executrix of the Estate of [illegible], Deceased,
Defendant in Error.

In Error to the Supreme Court of Michigan.

MOTION OF PLAINTIFF IN ERROR TO PLACE CAUSE ON SUBMARY DOCKET AND BRIEF IN SUPPORT THEREOF.

STEVENS T. B. WILKINSON,
Attorney for Plaintiff in Error.

[illegible]

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Supreme Court of the United States

OCTOBER TERM, 1913.

No. 251.

GEORGE W. RADFORD, *Plaintiff in Error,* vs. MARY D. MYERS, *Executrix of the Estate of* ELIJAH E. MYERS, *Deceased,* *Defendant in Error.*	*In Error to the Supreme Court of Michigan.*

BRIEF IN SUPPORT OF MOTION TO PLACE CAUSE ON SUMMARY DOCKET.

Hereto attached, and printed herewith, is plaintiff in error's motion and affidavit in support thereof, for an order placing the above entitled cause on the Summary Docket, and submitting it without oral argument upon the briefs of plaintiff in error filed with the motion.

The history of this case in this court, as shown by the files, records, motion and affidavit, briefly stated, is as follows:

That on March 25, 1912, a writ of error was allowed by Mr. Associate Justice Day and issued out of this court to the Supreme Court of the State of Michigan for the purpose of reviewing and correcting alleged errors of that court in the suit between George W. Radford, appellant, and Mary D. Myers, executrix of the estate of Elijah E. Myers, deceased, appellee; and due return of said writ was made to this court.

That on the same day, March 25, 1912, a citation was also issued by Mr. Associate Justice Day requiring the defendant

in error to appear in this court within thirty days from the date of said citation.

That said citation was personally served upon the defendant in error on March 28, 1912, by the United States Marshal for the Eastern District of Michigan.

That no appearance of the defendant in error has been entered in this cause.

That the attorneys representing the defendant in error in the court below were requested to enter into written stipulation designating the portions of the record in the court below, which should constitute the record on the writ of error issued by this honorable court in this cause, pursuant to rule eight of the Rules of this court, but said counsel declined to enter into such stipulation for the stated reason that they did not intend to have anything further to do with the case.

That because of such declination, on June 27, 1912, a true copy of plaintiff in error's statement of the errors upon which he intends to rely, and the parts of the record which he thinks necessary for the consideration thereof, was served upon the defendant in error; and the record in this court has been printed in accordance therewith, no praecipe indicating any additions thereto having been filed by or on behalf of the defendant in error; and

That said cause is now ready to be heard on the part of the plaintiff in error, his briefs having been filed with his motion to place the case on the Summary Docket.

The foregoing history of the case would seem to indicate that the defendant in error and her counsel have abandoned opposition to the writ of error herein, which is made further apparent from the fact that just prior to the preparation of this motion inquiry was made of one of said counsel as to whether any appearance on behalf of the defendant in error would be entered by him in this cause, in response to which he again stated that he did not intend to have anything fur-

ther to do with the case. Consequently due notice and copy of the motion was served upon the defendant in error and proof of service filed with the clerk.

The order asked for by the motion, in addition to placing the case on the Summary Docket, includes submission of the cause without oral argument, upon the briefs of plaintiff in error filed with the motion, because in the opinion of the plaintiff in error the cause does not require oral argument.

The sole question involved in the case is whether the Supreme Court of Michigan, on appeal from the Circuit Court for the County of Wayne, in Chancery, in its opinion and decree entered October 2, 1911, in the suit between George W. Radford, Appellant, plaintiff in error here, and Mary D. Myers, Executrix of the Estate of Elijah E. Myers, Deceased, Appellee, defendant in error here (said Elijah E. Myers, the original complainant, having died pendente lite), gave due effect to the prior decision and decretal order of the Circuit Court of the United States for the Middle District of Pennsylvania, filed and entered, respectively, on July 29-31, 1903, in the case of Elijah E. Myers vs. County of Luzerne, sur petition of George W. Radford to take money out of court; both causes relating to precisely the same subject-matter.

It is submitted that a cursory inspection of the record and briefs already filed will show that all phases of the question involved are so fully covered by the briefs as to make oral argument unnecessary. Therefore, unless for some reason unknown to us, this court may desire oral presentation of the case, we respectfully request the granting of the motion to place the cause on the Summary Docket and final submission thereof upon the briefs filed.

Respectfully submitted,

Thomas A. E. Weadock

Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 251.

GEORGE W. RADFORD, *Plaintiff in Error,* vs. MARY D. MYERS, *Executrix of the Estate of* ELIJAH E. MYERS, *Deceased,* *Defendant in Error.*	*In Error to the Supreme Court of Michigan.*

NOTICE OF MOTION.

To Mary D. Myers, Executrix of the Estate of Elijah E. Myers, Deceased, the above named defendant in error:

TAKE NOTICE: That hereto attached is a true copy of the motion, and affidavit attached thereto, which has been filed in the Supreme Court of the United States in the above entitled cause on behalf of George W. Radford, the above named plaintiff in error, for the entry of an order placing said cause on the Summary Docket of said court.

ALSO FURTHER TAKE NOTICE: That said motion will be submitted to the court for consideration and decision on November 10, 1913, at the opening of court on said day, or as soon thereafter as counsel can be heard.

Dated Detroit, October 16, 1913.

THOMAS A. E. WEADOCK,

Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 251.

GEORGE W. RADFORD,
Plaintiff in Error,
vs.
MARY D. MYERS, *Executrix of the Estate of* ELIJAH E. MYERS, *Deceased,*
Defendant in Error.

In Error to the Supreme Court of Michigan.

MOTION TO PLACE ON SUMMARY DOCKET.

And now comes George W. Radford, the plaintiff in error in the above entitled cause, by Thomas A. E. Weadock, his attorney, and moves this Honorable Court for the entry of an order placing this cause on the Summary Docket, and that the cause be submitted without oral argument upon the briefs of plaintiff in error filed with this motion.

This motion is based upon the files and records of this cause and the affidavit of Thomas A. E. Weadock hereto attached, which show the following facts:

That the citation issued herein on March 25, 1912, by Mr. Associate Justice Day, requiring appearance of the defendant in error in this cause within thirty days from said date, was personally served upon her on March 28th, 1912, at Detroit, in the Eastern District of Michigan, by the United States Marshal of said district.

That the attorneys representing the defendant in error in the courts below have declined to appear or have anything to do with the above entitled cause in this court.

That a true copy of the plaintiff in error's statement of the errors upon which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, was served upon the defendant in error on June 27, 1912.

That the record in this court has been printed by the clerk in accordance therewith, no praecipe indicating any additions thereto having been filed by or on behalf of the defendant in error.

That no appearance has been entered herein by said defendant in error.

That said cause is now ready to be heard on the part of the plaintiff in error, his briefs having been filed herewith.

That said cause, in the opinion of the plaintiff in error, does not require any oral argument; therefore, unless this Honorable Court for any reason may require oral argument, he is willing, upon the granting of this motion, to submit the same to the court upon his briefs filed herewith.

Dated Detroit, October 6, 1913.

THOMAS A. E. WEADOCK,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 251.

GEORGE W. RADFORD,
Plaintiff in Error,
vs.
MARY D. MYERS, *Executrix of the Estate of* ELIJAH E. MYERS, *Deceased,*
Defendant in Error.

In Error to the Supreme Court of Michigan.

STATE OF MICHIGAN,
COUNTY OF WAYNE.—ss.

Thomas A. E. Weadock, being duly sworn, deposes and says that he is the attorney for the plaintiff in error in the above entitled cause, and was such attorney in said cause in the Circuit Court for the County of Wayne and in the Supreme Court of Michigan: that very soon after the service of the citation upon the defendant in error, as appears by the files and records herein, and as set forth in the motion hereto attached and made part hereof, this deponent called upon Mr. William C. Stuart, one of the counsel representing and who personally conducted all of the proceedings in the lower courts on behalf of Elijah E. Myers and, after his death, on behalf of the defendant in error, and requested that said counsel enter into written stipulation designating the portions of the record in the court below which should constitute the record on the writ of error issued by this Honorable Court in said cause pursuant to rule eight of the rules of this court; that said counsel declined to enter into such stipulation, and stated as the reason for so declining that neither himself nor his firm would have anything further to do with the case;

that just prior to the preparation of this motion deponent inquired of said Stuart whether any appearance on behalf of the defendant in error would be entered by him in this cause, and said Stuart again stated that he did not intend to have anything further to do with the case.

Deponent further says that no notice of appearance of the defendant in error in this cause has been served upon him, and that the clerk of this court advises him that no such appearance has been entered of record.

THOMAS A. E. WEADOCK.

Subscribed and sworn to before me this 6th day of October, 1913.

WM. C. MCNEIL,

(Seal.) *Notary Public, Wayne County, Mich.*

My commission expires Sept. 12, 1917.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 251.

GEORGE W. RADFORD,
Plaintiff in Error,
vs.
MARY D. MYERS, *Executrix of the Estate of* ELIJAH E. MYERS, *Deceased,*
Defendant in Error.

In Error to the Supreme Court of Michigan.

PROOF OF SERVICE OF MOTION.

STATE OF MICHIGAN,
COUNTY OF WAYNE.—SS.

Thomas A. E. Weadock, being duly sworn, says that he is the attorney for the plaintiff in error in the above entitled cause; that on the sixteenth day of October, 1913, he served a true copy of the foregoing notice of submission of the motion of the plaintiff in error for an order placing the above cause on the Summary Docket, with a true copy of said motion and affidavit thereto attached, upon Mary D. Myers, executrix of the estate of Elijah E. Myers, deceased, the defendant in error above named, by depositing the same in the post-office at Detroit, Michigan, in a sealed envelope addressed to Mary D. Myers, 732 Second avenue, Detroit, Michigan, that being her place of residence, with postage fully prepaid thereon.

THOMAS A. E. WEADOCK.

Subscribed and sworn to before me this 16th day of October, 1913.

WM. C. MCNEIL,
Notary Public, Wayne County, Mich.

(Seal.)

My commission expires Sept. 12, 1917.

RADFORD *v.* MYERS.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 251. Submitted December 3, 1913.—Decided January 5, 1914.

Whether due effect was given by the state court to a judgment rendered in the Circuit Court of the United States presents a Federal question which gives this court jurisdiction to review the judgment of the state court, and to determine the question this court will examine the judgment in the Federal court, the pleadings and the issues and, if necessary, the opinion rendered.

Where the suit in which the former judgment is set up is not upon the identical cause of action the estoppel operates only as to matters in issue or points controverted and actually decided in the former suit.

Judgments become estoppels because they affect matters upon which the parties have been heard, but are not conclusive upon matters not in question or immaterial. *Reynolds* v. *Stockton*, 140 U. S. 254.

In a suit in which two of the parties successfully unite in asking the court to award the fund to one of them against a third party claiming it under an assignment, the judgment is not, as between the two so uniting, *res judicata* so that the one to whom it is awarded is not obligated to account therefor to the other under an agreement so to do if the record does not show that such question was also at issue and determined.

167 Michigan, 135, affirmed.

THE facts, which involve the effect to be given by the state court to a former judgment in a suit between some of the parties rendered by the Circuit Court of the United States and the extent to which such judgment was *res judicata* of the matters in controversy, are stated in the opinion.

Mr. Thomas A. E. Weadock for plaintiff in error:

Whether a state court has given due effect to the decision of a United States court is a Federal question. *Dupasseur* v. *Rochereau*, 21 Wall. 130; *Embry* v. *Palmer*, 107

U. S. 3; *Pendleton* v. *Russell*, 144 U. S. 640; *Central Bank* v. *Stevens*, 169 U. S. 432; *Hancock Bank* v. *Farnum*, 176 U. S. 640; *Werlein* v. *New Orleans*, 177 U. S. 390; *National Foundry* v. *Oconto Supply Co.*, 183 U. S. 216.

Matters in issue and decided by the judgment of a court having jurisdiction of the parties and the subject-matter of the suit are conclusively settled, and cannot be litigated again between the parties to that suit or any of their privies. 23 Cyc. 1215; *Hopkins* v. *Lee*, 6 Wheat. 109; *Cromwell* v. *Sac County*, 94 U. S. 351; *Johnson Co.* v. *Wharton*, 152 U. S. 252; *Southern Pacific Co.* v. *United States*, 168 U. S. 1.

A right, question or fact once put in issue and decided is concluded in any future action between the same parties or their privies, whether the subsequent action is for the same or a different cause of action. *New Orleans* v. *Citizens' Bank*, 167 U. S. 371.

A judgment is a bar to any future action between the same parties or their privies upon the same cause of action. *Cromwell* v. *Sac County*, 94 U. S. 351; *Dowell* v. *Applegate*, 152 U. S. 327; *Werlein* v. *New Orleans*, 177 U. S. 390.

Or as this last rule has more recently been very aptly stated—a judgment is conclusive as to all the *media concludendi*. *United States* v. *California Land Co.*, 192 U. S. 358; *American Exp. Co.* v. *Mullins*, 212 U. S. 312; *United States* v. *Southern Pac. Co.*, 223 U. S. 565; *Troxell* v. *D., L. & W. R. Co.*, 227 U. S. 434; 2 Black., Judgm. (2d ed.), § 506.

Those are held to be parties who have a right to control the proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from the decision. 2 Black., Judgm. (2d ed.), p. 808; 23 Cyc. 1240.

Matters which follow by necessary and inevitable inference from the judgment itself are equally covered by the estoppel as if they were specifically found in so

many words. 23 Cyc. 1306; *Nat. Foundry Co.* v. *Oconto Co.*, 183 U. S. 216; *Werlein* v. *New Orleans*, 177 U. S. 390; *Winona Land Co.* v. *Minnesota*, 159 U. S. 526; *Nalle* v. *Oyster*, 230 U. S. 165.

The estoppel covers matters which were actually determined, whether technically put in issue by the pleadings or not. 23 Cyc. 1304; 2 Black., Judgm. (2d ed.), § 614.

There need be no pleadings between co-parties in order that they may, as between themselves, be bound by the judgment, if they were essentially adversary parties, or their respective rights were in issue. *Baldwin* v. *Hanecy*, 204 Illinois, 281, affirming 104 Ill. App. 84; *Kohly* v. *Fernandez*, 133 App. Div. (N. Y.) 723; affirmed 201 N. Y. 561; *Corcoran* v. *Ches. & Ohio Canal Co.*, 94 U. S. 741; *Louis* v. *Brown Township*, 109 U. S. 163.

This is also the Michigan rule. *Waldo* v. *Waldo*, 52 Michigan, 91, 93; *Scripps* v. *Sweeney*, 160 Michigan, 148, 177.

The Federal decision is a bar to this litigation between the plaintiff in error and Col. Myers as to the half of the judgment paid by Luzerne County into the United States court.

No counsel appeared for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

Elijah E. Myers brought this suit in the Circuit Court of Wayne County, State of Michigan, against George W. Radford, the plaintiff in error herein, for an accounting and for a decree for the balance due him from a judgment in a suit of the former in which the latter acted as one of his attorneys and received the amount of the judgment. Myers having died during the pendency of the action, it was revived in the name of his executrix, the defendant in error. The decree of the Circuit Court in favor of the

defendant in error was affirmed by the Supreme Court of the State of Michigan (167 Michigan, 135), and the case comes here on error.

The record discloses that Myers had entered into a contract with the County of Luzerne, State of Pennsylvania, to furnish the plans and specifications for a court-house and had certain claims against the County arising therefrom. Counsel had been employed and suit commenced, but little progress made. Myers had assigned a one-half interest in the contract to his son, George W. Myers. In this state of affairs the elder Myers employed the plaintiff in error, who had theretofore been his attorney and to whom he was indebted, to prosecute the court-house claim. To secure his indebtedness to Radford, Myers assigned his remaining one-half interest in the claim to the plaintiff in error. Later, April 2, 1900, George W. Myers assigned his one-half interest to the plaintiff in error, the latter to account to him for the proceeds after deducting a $1,000 attorney's fee and one-half of the costs, to which assignment Elijah E. Myers gave his written assent; and shortly thereafter, April 11, 1900, George W. Myers, in consideration of $150, transferred his interest in his prior assignment and in the assignment from his father to him to the plaintiff in error.

The plaintiff in error engaged local counsel in Pennsylvania, who commenced suit in the United States Circuit Court for the Middle District of Pennsylvania, and prosecuted the court-house claim to a successful termination (*Myers* v. *Luzerne County*, 124 Fed. Rep. 436). Thereupon George W. Myers intervened in that suit, setting up his right to one-half of the judgment, claiming that his assignment to Radford had been fraudulently obtained; and one-half of the amount of the judgment was paid into court. Upon the petition of the plaintiff in error to remove the money, the jurat of which was signed by Elijah E. Myers, the court decreed that the

assignment was valid and awarded the fund to Radford, and dismissed George W. Myers' claim.

Elijah E. Myers thereafter brought this suit, alleging among other things that Radford, on April 11, 1900, acting on his behalf, purchased the one-half interest assigned by him to George W. Myers, and that at that time it was distinctly understood and agreed between the plaintiff in error and himself that the one-half interest so purchased, with the one-half interest assigned by him to Radford, should be held as security for the payment of all his indebtedness to Radford for loans and services and for the payment of the $150 given by Radford to George W. Myers and all costs in the litigation of the court-house claim, and that, after deducting such amounts from the judgment collected, the plaintiff in error should pay the balance to him. The plaintiff in error contended that the judgment in the United States Circuit Court was *res judicata* as to his right to the one-half interest in the court-house claim assigned to him by George W. Myers. He further alleged, however, that, notwithstanding his absolute ownership of the George W. Myers' one-half interest, he purchased it with the distinct intention that he would apply for the benefit of Elijah E. Myers the balance, if he succeeded in collecting the claim, after paying expenses and services and all Myers' indebtedness to him. But, he alleged, he did not intend to waive his right as absolute owner or allow Myers to dictate the amount of expenses, services or indebtedness. The Circuit Court entered a decree for the balance due Myers.

The Supreme Court held that the assignment of April 2, 1900, was merged in the assignment of April 11, 1900, and also held that the Federal decision in Pennsylvania had not determined that the trust relation between the plaintiff in error and Elijah E. Myers had terminated; as to which holdings the plaintiff in error assigns error, upon the failure of the Supreme Court to give due credit in those

respects to the judgment of the United States Circuit Court.

From the foregoing statement it is evident that the sole Federal question involved arises from the alleged denial in the judgment of the Supreme Court of Michigan of due effect to the judgment rendered in the United States Circuit Court in Pennsylvania, which is relied upon by the plaintiff in error as *res judicata* of the matters in controversy. Whether such effect was given as the former judgment required presents a Federal question for determination. *National Foundry & Pipe Works* v. *Oconto Water Supply Co.*, 183 U. S. 216, 233. To determine this issue we examine the judgment in the former case, the pleadings filed and the issues made, and, if necessary to elucidate the matters decided, the opinion of the court which rendered the judgment. *National Foundry & Pipe Works* v. *Oconto Water Supply Co.*, *supra*, 234, and previous cases in this court therein cited.

As the suit in the Michigan court was not upon the identical cause of action litigated in the United States Circuit Court the estoppel operates only as to matters in issue or points controverted and actually decided in that suit. *Cromwell* v. *Sac County*, 94 U. S. 351; *Southern Pacific R. R. Co.* v. *United States*, 168 U. S. 1, 50; *Troxell* v. *Del., Lack. & West. R. R.*, 227 U. S. 434, 440.

Applying these familiar principles, how stands the present case? The elder Myers brought this suit upon the theory that the amount of the judgment which had been paid over to Radford on August 22, 1903, which the Supreme Court of Michigan found was $12,711.23, was held in trust and to be accounted for by Radford to him because of the agreement set up in the complaint in the state court, already referred to. The record of the proceedings in the United States Circuit Court shows that one-half of the money due upon the claim of Elijah E. Myers against Luzerne County had been paid into court in the original suit of Myers against Luzerne County.

Radford had filed a petition asking for the payment of the money to him as the owner of the judgment. George W. Myers, as respondent, filed an answer, claiming the amount in court and attacking his assignment to Radford. It was upon that petition and answer and testimony that the case was heard and the following order made:

"In the United States Circuit for the Middle District of Pennsylvania, February Term, 1903.

"No. 3.

"Elijah E. Myers

v.

"County of Luzerne.

"In the Matter of Petition of George W. Radford to Take Money Out of Court.

"At a Session of said Court Held at Scranton, in said District, on the 31st Day of July, One Thousand Nine Hundred and Three.

"Present: Honorable R. W. Archbald, District Judge.

"The above matter having heretofore been heard upon said petition, answers and proofs, and the same having been argued by counsel for Petitioner, as well as for the Respondent, respectively, and due consideration had thereon, it is now ordered, adjudged and decreed that the assignment from Respondent to Petitioner of the 11th day of April, one thousand nine hundred is valid, and an absolute assignment of all the interest of said Respondent in the said contract between Elijah E. Myers and the County Commissioners of Luzerne County of date Feb. 22, 1895, and that the fund in court be awarded to Petitioner, George W. Radford; and that the claim of George W. Myers, Respondent, be dismissed with costs to be taxed against said Respondent."

A reading of this order, which is said to embody the Federal judgment relied upon by the plaintiff in error as *res judicata* of the present controversy, shows that the only matter adjudged concerned the assignment from the

respondent (Radford) to the petitioner (George W. Myers), of date the eleventh day of April, 1900, the court holding that it was an absolute assignment of the interest of the respondent in the contract between Elijah E. Myers and the County of Luzerne, awarding the fund in court (which was one-half of that recovery) to the petitioner, and decreeing that the claim of the respondent be dismissed and that he pay all the costs. Certainly there is nothing in that judgment to conclude the present suit in the state court between Elijah E. Myers and Radford. The proceeding in the United States Circuit Court in Pennsylvania is specifically limited to the controversy between Radford and the respondent in that proceeding, George W. Myers. If there could be any doubt as to the effect of the order, the opinion of Judge Archbald found in the record shows how the matter was regarded by him. The opinion recites that, a verdict having been rendered in favor of Elijah E. Myers, because of a controversy with respect to one-half of it, leave of court had been given to pay one-half of the judgment into court, and that the petitioner, Radford, and George W. Myers, by each of whom ownership was asserted, by pleadings and proof had submitted the matter to that court, and that it had jurisdiction to determine to whom the fund belonged. After referring to the original contract and the various steps to collect the money from the County of Luzerne and the assignment of a one-half interest from the elder Myers to his son in 1896, Judge Archbald said (124 Fed. Rep. 438:)

"Col. Myers explained to Mr. Radford that one-half the contract had already been assigned to George, and it was recognized that if he held on to the assignment there would be little, if anything, coming to Col. Myers after he had settled with Radford. But it was stated by Col. Myers that the assignment was without consideration, and if he succeeded, as he hoped, in getting George to surrender it, then Radford was to account to him for that

interest also, after deducting for expenses and services. The trust relation so established still continues."

The opinion then goes on to consider elaborately the claim of George W. Myers to the one-half interest paid into court, as against Radford, and finds that the assignment of April 11, 1900, was a valid sale from George W. Myers to Radford and that the assignment was absolute in form and intended by George W. Myers as a complete disposition to Radford for $150 of the one-half interest derived from his father. The judge concludes his opinion by directing that an order be drawn awarding the fund to Radford, and dismissing the claim of George W. Myers with costs. Thereupon the order which we have already set forth was made.

The fact that the order was made in an intervention in the original suit of *Myers* v. *Luzerne County* and that Myers verified the petition filed by Radford asking to have the fund in court paid over to the latter, did not raise any issue between Elijah E. Myers and Radford as to the alleged agreement that Radford should account to Myers for the fund. And the fact that both Elijah E. Myers and Radford were parties in the same suit did not have the effect to submit the controversy made in the present litigation to the decision of the United States Circuit Court. Judgments become estoppels because they affect matters upon which the parties have been heard or have had an opportunity to be heard, but are not conclusive upon matters not in question or immaterial. *Reynolds* v. *Stockton*, 140 U. S. 254, 268, 269.

It seems very clear that there was nothing in this proceeding, in the issues made or the judgment rendered, that in any wise concluded the right of Elijah E. Myers to bring suit, which he subsequently prosecuted in the state court, calling upon Radford for an accounting concerning the proceeds of the judgment in his hands.

Judgment of the Supreme Court of Michigan affirmed.